

**Study on Manner of
IFRS Implementation in EU
and
Current Status of IFRS
Implementation in Select Countries**



Research Committee
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Foreword

Significant benefits from the convergence with or adoption of International Financial Reporting Standards (IFRS), including a decreased cost of capital, greater mobility of capital, greater efficiency in the allocation of resources, improved and more comparable financial reporting has prompted many countries to pursue the path of convergence of National Accounting Standards with/adoption of IFRS.

Realising the need of convergence with IFRS, a task force was constituted by the Institute of Chartered Accountants of India (ICAI) in 2006, which laid down initially the strategy for convergence and based on the recommendations of the Task force, convergence with IFRS for Public-interest Entities from accounting periods commencing on or after April 1, 2011 was announced by ICAI. The Ministry of Corporate Affairs (MCA), taking this initiative of ICAI further ahead, has issued a roadmap to converge with IFRS for specified class of companies and also issued another roadmap for banking and insurance companies. To meet the timelines laid down by the MCA regarding convergence, ICAI has made all-out efforts to address needs with regards to various aspects of implementation. Considering the above coupled with the fact that European Union (EU) had already implemented IFRS since 2005, the Research Committee took up the task to undertake a 'Study on manner of IFRS Implementation in EU and Current Status of IFRS Implementation in select countries'. This publication is a study on the process which was undertaken by EU at the time as well as the current status of IFRS Implementation in select countries.

I would like to place on record my deep appreciation for the efforts put in by CA. Bhavna G. Doshi, Chairperson, Research Committee, and other members of the Research Committee for their efforts.

I sincerely hope that this endeavour of the Research Committee will be beneficial to the members as well as to all others concerned.

New Delhi
February 8, 2011

CA. Amarjit Chopra
President

Preface

International Financial Reporting Standards (IFRSs), developed by the International Accounting Standards Board (IASB), were mandated for adoption by the European Union for listed entities from 1.1.2005. IASB is a body established in the year 2001, in public interest, single set of high quality global accounting standards. The process of adoption by European Union saw significant activities with the IASB taking up specific projects to develop/modify existing standards in consultation with the EU's relevant bodies. This was followed by acceptance of these standards by several small and developing economies as also countries like Australia and New Zealand. Subsequently, major economies like Canada, Japan, China, South Korea etc. took up projects to examine compatibility of these standards for adoption in their jurisdictions. US also entered into MoU with IASB for convergence of US GAAP and IFRSs and later decided to consider incorporation of IFRS in US GAAPs. Each of the economy adopting or converging with IFRSs accepted the need for common global accounting principles for raising resources in increasingly globalised capital markets.

India is also no exception. The process of examining possible manner of adoption or convergence commenced in the year 2006. India decided to follow the convergence route and the process of identifying areas where the principles set out in IFRSs may not be appropriate in the Indian conditions was undertaken and roadmap was set out. Simultaneously, it was noticed that some countries which had started the work on convergence or adoption of their local standards with IFRSs had set out longer time frames, there were issues about its implications from taxation perspectives, there were issues about availability of market data to determine fair

values, potential volatilities in stock prices, especially, where the markets do not have significant depth and breadth and, there were backroom murmurs in the countries that have adopted IFRSs on its overall impact.

It is in this background that the Research Committee decided to compile information about the manner of adoption of IFRSs in select economies, specifically EU ,with a view to provide study of the processes that were adopted or are being adopted by other countries. The study also provides the current status of IFRSs implementation by key EU member countries and other select countries like Australia, Canada, Brazil etc.

On behalf of the Research Committee, I would like to place on record our appreciation of the immense hard work and efforts put in by CA. Ruchi Rastogi in making this Study possible. I would also like to acknowledge contribution made in this initiative by CA. Sumantra Guha, the Vice Chairman of the Committee and other members of the Committee.

I would also like to place on record my sincere appreciation of the guidance provided by CA. Amarjit Chopra, President, ICAI and CA. G. Ramaswamy, Vice President, ICAI for this study.

I sincerely believe that this Study would prove immensely useful to the members as well as to others concerned.

New Delhi
February 7, 2011

CA. Bhavna G. Doshi
Chairperson
Research Committee

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The International Financial Reporting Standards (IFRS)

The term IFRS indicates the whole body of IASB authoritative literature, and includes:

- IFRS issued by the IASB
- International Accounting Standards (IAS) issued by the IASB in force, or revisions thereof issued by the IASB
- Interpretations of IFRS and IAS developed by the IFRS Interpretations Committee (formerly IFRIC) and approved for issue by the IASB and
- Interpretations of IAS developed by the SIC and approved for issue by the IASB or IASB.

IFRS are designed for use by profit-oriented entities.

IFRS comprise a series of bold-type and plain-type paragraphs. Generally the bold-type paragraphs outline the main principle, and the plain-type paragraphs provide further explanation. Both bold- and plain-type paragraphs have equal authority.

IFRS issued by IASB/IASB are not limited to a particular legal framework. Therefore, financial statements prepared under IFRS by countries often contain supplementary information required by local statute or listing requirements.

IFRS implementation in the European Union (EU)

The background¹

The main goal of the EU is the progressive integration of member States' economic and political systems and the establishment of a single market based on the free movement of goods, people, money and services.

The process of implementation of IFRS in EU started in the year 2000 at the European Council meeting held on 23-24 March 2000 at Lisbon. At this meeting, having a single financial market was identified as a key to the EU's central objectives of growth and high employment. Further, a need was identified to enhance comparability of companies' financial statements pan Europe and a need to have common financial reporting standards in EU. It was felt that this would also facilitate trading of securities on EU and international markets on the basis of financial statements using a single set of financial reporting standards.

At that time, the EU's Accounting Directives were the basis of the EU's accounting rules for limited liability companies. EU had, from 1970² onwards, started the process of harmonising member states' diverse national GAAPs through a series of Accounting Directives e.g.,

- 4th Company Law Directive on Annual Accounts
- 7th Company Law Directive on Consolidated Accounts
- Directive on the annual accounts and consolidated accounts of banks and other financial institutions
- Insurance Directive

¹ Annexure 1 - Communication from the Commission to the Council and the European Parliament

² EU Implementation of IFRS and the Fair Value Directive – A report for the European Commission - October 2007 available at http://www.icaew.com/index.cfm/route/151992/icaew_ga/pdf

EU directives are binding on companies which are covered in the scope of each respective directive. The directives are based on the treaties entered between various member states of the EU. However, it was felt that these Directives did not meet the need of companies that wished to raise capital on pan-European or international securities markets.

There was significant diversity of accounting approaches in the EU resulting from many options being available in the Directives and from different levels of enforcement through out the EU as also different financial reporting rules and differing interpretations adopted by different countries based on distinct traditions within the EU.

The reform to single set of financial reporting standards would help fragmented EU to develop into a deep liquid single EU capital market.

Therefore, at Lisbon, the European Council set the goal of a fully integrated financial services market by 2005. To achieve this goal the starting point was comparable financial reporting standards. The financial reporting standards to be chosen for the purpose ought to be such as would meet investors' needs and be compatible with global developments. An internationally recognised financial reporting framework was considered essential for financial reporting by the listed EU companies.

The Choice – IFRS vs. US GAAP

There were two financial reporting frameworks in use in the EU in 2000 that could provide internationally recognised standards: US GAAP and IFRS. Both were recognised as investor-oriented financial reporting systems that provide generally equivalent levels of investor protection. There were, however, numerous differences in their practical reporting requirements.

The EC decided to use IFRS as the set of standards for the EU companies wishing to raise capital on an international and pan-European basis. IFRS were preferred as:

4 Study on manner of IFRS Implementation in EU...

- these standards were drawn up with an international perspective whereas US GAAP was tailored to the US environment
- US GAAP was voluminous and based on very detailed rules and interpretations and it was felt that, in the US, effective application of GAAP stemmed largely from the strong regulatory and enforcement powers exercised by the US Securities and Exchange Commission (SEC)
- The European Union did not have influence on the elaboration of US GAAP.

Although EC in 1995 had identified IFRS as a potential solution at least for publicly traded multinationals, there were few open questions:

- whether and for which companies, compliance with IFRS should be required or permitted; and
- Compatibility of IFRS with the Accounting Directives.

In addition to the above, publication of IAS 39, *Financial Instrument: Recognition and Measurement* in 1998 by the IASC was in conflict with the Accounting Directives and therefore, presented an obstacle to the process of convergence with IFRS. In 1998, the Fair Value Directive was adopted to allow European companies that already complied with IFRS to continue to do so, and to promote the larger goal of convergence between European requirements and IFRS.

The roadmap and implementation process

The EC, in June 2000³, recommended the roadmap of adoption of IFRS to the Council and the European Parliament. The roadmap, in nutshell, recommended as under:

- Require all EU listed companies to prepare consolidated IFRS financial statements from 1 January 2005.

³ Annexure 1 - Communication from the Commission to the Council and the European Parliament

- For national statutory individual accounts, it was noted that the regulatory and tax requirements could make the use of IFRS inappropriate or even invalid. Nevertheless, wherever possible, member states should encourage to use IFRS for individual accounts as well.
- Establish EU endorsement process at political and technical level.

In February 2001⁴, the EC proposed a Regulation to require all EU companies listed on a regulated market, including banks and insurance companies (about 7,000 companies in all), to prepare consolidated accounts in accordance with IFRS by 2005.

EU Member States were given an option to extend this requirement to unlisted companies and to individual company accounts.

In March 2001⁵, a proposal to form European Financial Reporting Advisory Group (EFRAG) was floated as a private sector structure to provide inputs to the IASB and assess IFRS issued by the IASB.

In April 2001⁶, comparisons of IAS 1-41 and SIC 1-25 with the EU Directives were published. The comparisons were prepared by the Contract Committee on the Accounting Directives (Contact Committee). The Contact Committee is an advisory body comprising representatives of the Member States and representatives of the Commission.

In May 2001, the Council and the European Parliament introduced the fair value accounting in the EU Accounting Directives^{7,8}. The Directive amended the 4th Directive on Annual Accounts, the 7th

4 Annexure 2 - Proposal for a Regulation of the European Parliament and of the Council

5 Annexure 3 - Proposal for EFRAG

6 Examination of the conformity between IAS 1 to IAS 41

http://ec.europa.eu/internal_market/accounting/docs/markt-2001-6926/6926_en.pdf and SIC 1 to 25 and the European Accounting Directives

http://ec.europa.eu/internal_market/accounting/docs/markt-2001-6901/6901_en.pdf

7 Annexure 4 - Fair value directive

8 Annexure 5

– Press release

– Financial reporting: Commission welcomes adoption of fair value accounting directive

Directive on consolidated accounts and the Bank Accounts Directive to enable the valuation of certain financial instruments at fair value. The fair value of financial instruments was determined by the market value or generally accepted valuation models if there was no a reliable (liquid) market. Nearly all changes in fair value, even though not realised, needed to be shown in the company's profit and loss account. The main objective of the Directive was to enable companies to fully apply IFRS including IAS 39 on the valuation of financial instruments within the framework of the Accounting Directives.

In June 2001, two committees, a European Securities Committee⁹ (ESC) and a Committee of European Securities Regulators (CESR)¹⁰ (later on re-christened as European Securities and Markets Authority (ESMA)¹¹ with effect from 1 January 2011) were created by the EC. The ESC composed of high-level representatives of the Member States and their role was to advise the Commission on issues relating to securities policy. The CESR was set up as an independent advisory body composed of representatives of the national public securities regulatory authorities to advise the Commission on the technical details of securities legislation. ESMA which has been created in accordance with regulation No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 amending decision No. 716/2009/EC and repealing Commission decision 2009/77/EC.

In June 2001, EFRAG was established¹². In December 2001, EFRAG reported that there are no actual inconsistencies between IAS 1 to 41 (and related SIC) and the 4th and 7th Directives but recommended clarification of the Directives in three areas cited in their report¹³

In June 2002, EFRAG recommended to the EC to endorse current standards (IAS 1 to 41 & SIC 1 to 33 i.e. then existing IFRS) 'en bloc'¹⁴.

9 Annexure 6 – Establishment of the European Securities Commission

10 Annexure 7 – Establishment of the Committee of European Securities Regulators

11 Annexure 8 – Establishment of ESMA

12 Establishment of EFRAG www.efrag.org/content/default.asp?id=4103

13 Annexure 9 - EFRAG report on the modernised Directives and IFRS

14 Annexure 10 – EFRAG letter to adopt IFRS

EU Regulation¹⁵

The European Union, on July 19, adopted regulation requiring all listed entities in the EU to apply IFRS to their consolidated financial statements from 1 January 2005. The listed entities include banks and insurance companies as well.

The regulation gave option to the member states to defer application of IFRS until 2007 for those companies that are listed both in the EU and elsewhere and that were using US GAAP (or other GAAP) as their primary basis of accounting, as well as for companies that had only publicly traded debt securities.

The regulation also gave the option to the member states of extending the requirements of the Regulation to unlisted companies and to the production of individual accounts.

Status in 2005

Use of IFRS whether required or permitted by EU member states in 2005¹⁶

Country	Companies	Publicly traded companies		Non-publicly traded companies	
		Consolidated	Legal entity	Consolidated	Legal entity
Austria	All	Required	Not permitted	Permitted	Not permitted
Belgium	Credit institutions	Required	Not permitted	Permitted	Not permitted
	Other	Required	Not permitted	Permitted	Not permitted
Cyprus	All	Required	Required	Required	Required
Czech Republic	All	Required	Required	Permitted	Not permitted
Denmark	All	Required	Permitted	Permitted	Permitted
Estonia	Credit institutions, insurance companies, financial	Required	Required	Required	Required

¹⁵ Annexure 11 - EU IAS regulation

¹⁶ Annexure 12 - Report from the Commission to the Council and the European Parliament 24/4/2008.

	and mixed financial holding companies and investment companies Other	Required	Required	Permitted	Permitted
Finland	Insurance	Required	Not Permitted	Required	Not Permitted
	Other	Required	Permitted	Permitted	Permitted
France	All	Required	Not permitted	Permitted	Not Permitted
Germany	All	Required	Not permitted	Permitted	Not Permitted
Greece	All	Required	Required	Permitted	Permitted
Hungary	All	Required	Not permitted	Permitted	Not permitted
Ireland	All	Required	Permitted	Permitted	Permitted
Italy	Supervised financial companies, companies with financial instruments widely distributed among the public	Required	Required	Required	Required
	Insurance companies	Required	Not permitted	Required	Not permitted
	Other	Required	Required	Permitted	Permitted
Latvia	Banks, insurance companies and other financial institutions	Required	Required	Required	Required
	Other	Required	Permitted*	Permitted	Not permitted
Lithuania	Banks and controlled financial	Required	Required	Required	Required

* Latvia: Companies listed on the official list of the Riga Stock Exchange are required to prepare IFRS – EU legal entity accounts for listing purposes only.

	institutions Other	Required	Permitted	Not permitted	Not permitted
Luxembourg	All	Required	Permitted	Permitted	Permitted
Malta	All	Required	Required	Required	Required
Netherlands	All	Required	Permitted	Permitted	Permitted
Poland	Banks	Required	Not Permitted	Required	Not Permitted
	Pending admission to regulated market	N/A	N/A	Permitted	Permitted
	Subsidiary in IFRS group	N/A	N/A	Permitted	Permitted
	Other	Required	Permitted	Not permitted	Not permitted
Portugal	Banks and financial institutions	Required	Not Permitted	Permitted	Not permitted
	Subsidiary in IFRS group	N/A	N/A	Permitted	Permitted
	Other	Required	Permitted	Permitted	Not permitted
Slovakia	All	Required	Not Permitted	Required	Not permitted
Slovenia	Banks and Insurance companies	Required	Required	Required	Required
	Other	Required	Permitted	Permitted	Permitted
Spain	All	Required	Not permitted	Permitted	Not permitted
Sweden	All	Required	Not permitted	Permitted	Not permitted
United Kingdom	All	Required	Permitted	Permitted	Permitted

Status in 2010

Use of IFRS whether required or permitted by EU member states in 2010¹⁷

Country	Companies	Publicly traded companies		Non-publicly traded companies	
		Con-solidated	Legal entity	Con-solidated	Legal entity
Austria	All	Required	Not permitted	Permitted	Not permitted
Belgium	Credit institutions	Required	Not permitted	Required	Not permitted
	Real Estate Investment companies	Required	Required	Required	Required
	Others	Required	Not permitted	Permitted	Not permitted
Bulgaria	SMEs	Required	Required	Permitted	Permitted
	Others	Required	Required	Required	Required
Cyprus	All	Required	Required	Required	Required
Czech Republic	All	Required	Required	Permitted	Not permitted
Denmark	All	Required	Permitted	Permitted	Permitted
Estonia	Credit institutions, insurance companies, financial and mixed financial holding companies and investment companies	Required	Required	Required	Required
	Other	Required	Required	Permitted	Permitted
Finland	Insurance	Required	Not permitted	Required	Not permitted
	Other	Required	Permitted	Permitted	Permitted

¹⁷ Annexure 13 – Implementation of the IAS Regulation (1606/2002) in the EU and EEA dated 01/07/2010

France	All	Required	Not permitted	Permitted	Not permitted
Germany	All	Required	Not permitted	Permitted	Not permitted
Greece	All	Required	Required	Permitted	Permitted
Hungary	All	Required	Not permitted	Permitted	Not permitted
Ireland	All	Required	Permitted	Permitted	Permitted
Italy	Supervised financial companies, companies with financial instruments widely distributed among the public	Required	Required	Required	Required
	Insurance companies	Required	Not permitted	Required	Permitted
	Other	Required	Required	Permitted	Permitted
Latvia	Banks, insurance companies and other financial institutions	Required	Required	Required	Required
	Other	Required	Required	Permitted	Not permitted
Lithuania	Banks and controlled financial institutions	Required	Required	Required	Required
	Other	Required	Required	Permitted	Not permitted
Luxembourg	All	Required	Permitted	Permitted	Permitted
Malta	Banks, insurance companies, certain other supervised financial	Required	Required	Required	Required

	institutions and larger companies deemed significant in the local economy Others	Required	Required	Permitted	Permitted
Netherlands	All	Required	Permitted	Permitted	Permitted
Poland	Banks	Required	Not permitted	Required	Not permitted
	Pending admission to regulated market	N/A	N/A	Permitted	Permitted
	Subsidiary in IFRS group	N/A	N/A	Permitted	Permitted
	Other	Required	Permitted	Not permitted	Not permitted
Portugal	Banks and financial institutions	Required	Required	Required	Not permitted
	Subsidiary in IFRS group	N/A	N/A	Permitted	Permitted
	Insurance company not within the scope of consolidation	N/A	N/A	Permitted	Permitted
	Other	Required	Permitted	Permitted	Not permitted
Slovakia	Public interest entity*	Required	Required	Required	Required
	Others	Required	Permitted	Required	Permitted*

* Companies of public interest mean the banks, Export-Import Bank of Slovak Republic, insurance companies excepting health insurance companies, stock exchange, Office of Slovak Assurors, Slovak Railroads, reinsurance companies, asset management companies and the companies, that at least in two consecutive reporting years fulfil at least two from following three preconditions: gross amount of asset 5 billions of Slovak Crowns (approximately 149.000.000, EUR), net turnover over 5 billion of Slovak Crowns and average number of employees over 2000.

Slovenia	Banks and Insurance companies	Required	Required	Required	Required
	Other	Required	Permitted	Permitted	Permitted
Spain	Group with listed entity	Required	Not permitted	Required	Not permitted
	Other	Required	Not permitted	Permitted	Not permitted
Sweden	All	Required	Not permitted	Permitted	Not permitted
United Kingdom	All	Required	Permitted	Permitted	Permitted
Romania	Credit Institutions	Required	Not permitted	Required	Not permitted
	Other	Required	Not permitted	Permitted	Not permitted
Iceland	Medium sized and big companies	Required	Required	Permitted	Permitted
	Others	Required	Required	Not permitted	Not permitted
Liechtenstein	All	Required	Permitted	Permitted	Permitted
Norway	All	Required	Permitted	Permitted	Permitted

IASB Support

Pre and during implementation process

EU and IASB worked closely to facilitate EU adoption of IFRS.

When Europe was adopting IFRS, IASB agreed to provide a 'stable platform' for 2005. 'Stable platform' meant issuing, by 31 March 2004, all of the new and revised Standards that were required for companies adopting IFRS in 2005, with no further changes until after 2005.

The IASB also agreed to:

- improve 13 standards
- issue a standard on share-based payments
- issue a standard on business combinations
- issue a standard on disposal of non-current assets and presentation of discontinued operations
- issue a standard on insurance contracts
- issue a standard on exploration for and evaluation of mineral resources
- amend IAS 39 dealing with macro hedging
- issue a standard on first-time adoption.

Post implementation

After 2005, the EU requested IASB to work on 'Liabilities arising from Participating in a Specific Market - Waste Electrical and Electronic Equipment' and IFRIC 6 was issued. Later in 2008, the EU requested the IASB to make a quick fix to IAS 39, *Financial Instruments: Recognition and Measurement* and that was done.

IFRS as adopted by EU - Endorsement of IFRS - EU¹⁸

The term IFRS refers to International Financial Reporting Standards issued by the IASB. The term IFRS –EU refers to IFRS endorsed by the European Union.

During the period of September 2003 and November 2004, the EU endorsed IFRS and related interpretations. However, IAS 39 *Financial Instruments: Recognition and Measurement* standard was endorsed after making two carve outs¹⁹.

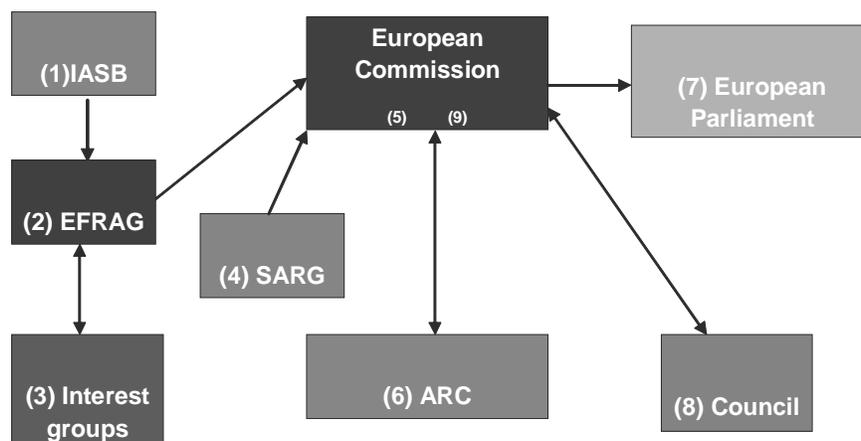
One carve out was on the full fair value option. This was based on the observations from the European Central Bank and prudential supervisors represented in the Basel Committee. The carve out did not allow full fair valuation of all liabilities. The main category of liabilities excluded from fair valuation was fair valuing own debt. On 16 June 2005 the IASB published an amended version of IAS 39 *Recognition and Measurement – the Fair Value Option (FVO)* with a restricted fair value option whose application was subject to principles and combined with its extensive disclosure requirements. The amended standard had wide support, from the financial services industry as well as from the European Central Bank and the Basel Committee of banking supervisors. The improved standard was unanimously approved by Member States at the Accounting Regulatory Committee on 8 July 2005 (see IP/05/884 and MEMO/05/246) and also supported by the European Parliament. Therefore, this carve out was removed on 15 November 2005.

Second carve out was on certain hedging accounting provisions where many European banks criticised IAS 39 as it posed a major problem for operating their risk management practices. The endorsed standards (called as IFRS – EU) are published in the Official Journal of the EU in the official languages of the European community.

¹⁸ http://ec.europa.eu/internal_market/accounting/ias/index_en.htm

¹⁹ Annexure 14 – Press release on Accounting standards: Commission endorses “IAS 39 Fair Value Option”

Endorsement process for standards being issued by IASB (post 2005)²⁰



- (1) the IASB issues a standard
- (2) EFRAG holds consultations with interest groups
- (3) EFRAG delivers its advice to the Commission whether the standard meets the criteria of endorsement. The criteria examined are set forth in Article 3(2) in the IAS Regulation²¹ (not contrary to the true and fair view principle set out in the 4th and 7th Company Law Directives, conducive to the European public good, understandability, relevance, reliability and comparability). EFRAG also prepares in cooperation with the Commission an effect study about the potential economic effects of the given standard's application in the EU.
- (4) SARG (the Standards Advice Review Group) issues its opinion whether EFRAG's endorsement advice is well-balanced and objective. The legal basis of this body and its opinion is Commission Decision No. 2006/505/EC.²²

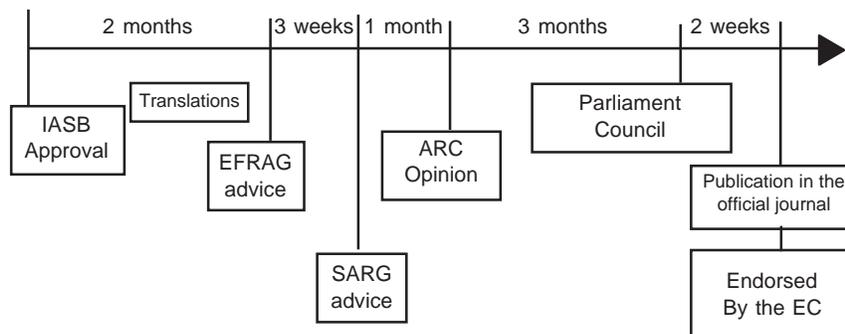
²⁰ Annexure 15 Endorsement process in EU

²¹ Annexure 11 EU IAS regulation.

²² Annexure 16 Commission Decision of 14 July 2006 setting up a Standards Advice Review Group to advise the Commission on the objectivity and neutrality of the European Financial Reporting Advisory Group's (EFRAG's) opinions.

- (5) Based on the advice of EFRAG and opinion of SARG, the Commission prepares a draft endorsement Regulation. The adoption of the Regulation follows a regulatory comitology procedure with scrutiny, in accordance with Article 5a and 8 of the Council Decision 1999/468.²³
- (6) ARC (Accounting Regulatory Committee), set up in accordance with Article 6 of the IAS Regulation votes on the Commission proposal. The qualified majority rule applies.
- (7) The European Parliament and the Council of the European Union have 3 months to oppose the adoption of the draft Regulation by the commission
- (8) If the European Parliament and the Council give their favourable opinion on the adoption or the 3 months elapsed without opposition from their side, the Commission adopts the draft Regulation. After adoption, it is published in the Official Journal and enters into force on the day laid down in the Regulation itself.

The estimated timing of each step is as follows:



EFRAG ²⁴

EFRAG was set up in 2001 to assist the European Commission in the endorsement of IFRS issued by the International Accounting Standards Board (IASB) by providing advice on the technical quality of IFRS. It is a private sector body set up with the encouragement of the European Commission by the European organisations

²³ Annexure 17 Council Decision 1999/468

²⁴ www.efrag.org

prominent in European capital markets, known collectively as the 'Founding Fathers'.

In addition to taking advice from EFRAG, the European Commission seeks advice from Member states through the Accounting Regulatory Committee (ARC), in which EFRAG participates as an official observer.

The work of EFRAG is overseen by a Supervisory Board drawn from the Member body organisations of EFRAG. The European Commission is an observer at the Supervisory Board meetings.

EFRAG operates through a Technical Expert Group (TEG). The 11 members are drawn from throughout the European Union and from a variety of backgrounds. They devote 30 to 50 percent of their time to EFRAG including meetings for three days each month to consider IFRS and interpretations prepared by the IFRS Interpretations Committee of the IASB. The Chairman and all members of TEG and the working groups provide their time without charge to EFRAG. The TEG makes its decisions independently of the Supervisory Board and other interests.

EFRAG's role is both proactive and reactive. In particular it:

- provides advice to the European Commission on the endorsement of new or amended IFRS and IFRIC interpretations
- comments on proposed IFRS and IFRIC interpretations, IASB discussion papers and other consultative documents
- attends various IASB Working Group meetings as observers
- maintains regular contacts with the IASB through meetings with its Chairman. IASB Board members and senior staff participate in each TEG meeting
- works closely with European National Standard Setters (ENSS) on various activities designed to encourage debate in Europe on accounting matters, in order to develop European views on issues of importance and enhance the quality of Europe's input to the IASB

- meets quarterly with the European National Standard Setters (ENSS) to exchange views
- meets quarterly with European User representatives in the EFRAG User Panel
- participates in the World Standard Setters meetings (organised by the IASB)
- participates in the meetings of the former IASB liaison standard setters where technical issues of a proactive nature are discussed.

In addition, EFRAG has recently been invited by the IASB to provide input to the IASB/FASB convergence work.

EFRAG has been granted observer status in the IASB working groups on:

- Financial Instruments
- Insurance Accounting
- Performance Reporting
- SME Accounting
- Leasing
- Employee Benefits Working Group.

EFRAG maintains contacts with the European Commission directly, as well as indirectly, through the Commission representatives participating as observers in all TEG meetings and working groups and by holding regular meetings.

The members of TEG are appointed by the Supervisory Board, with the assistance of a Nominating Committee, following an open call for candidates. The Supervisory Board looks primarily to the qualifications of the TEG candidates in terms of knowledge and experience and endeavours to ensure a broad geographical balance, together with experience from preparers, the accounting profession, users and academics.

In the same way, members of working groups are appointed following a call for candidates published on the EFRAG website with the aim of ensuring an appropriate professional and geographical balance.

Due process and transparency are important features of EFRAG's work. The monthly meetings of TEG are open to the public. In addition, when preparing comment letters on exposure drafts, discussion papers and other consultative documents and when preparing endorsement advice to the European Commission, EFRAG seeks input from organisations, companies and the public on TEG's draft views.

In 2005, EFRAG reached an understanding with the European national standard setters that EFRAG and the national standard setters should work more closely together to improve the input from Europe to the global standard-setting process. It was also agreed to pool resources on the proactive work in order to stimulate, carry out and manage proactive development activities designed to encourage the debate in Europe on accounting matters and designed to enhance the quality of the proactive input to the IASB.

EFRAG is funded by the Member body organisations which pay subscriptions on a half-yearly basis and by voluntary contributions.

SARG²⁵

The European Commission has established SARG in the area of accounting to ensure objectivity and proper balance of the EFRAG's opinions. The Group is composed of independent experts and high-level representatives from National Standard Setters whose experience and competence in accounting are widely recognised. The Group's task is to assess whether the endorsement advice given by the EFRAG is well balanced and objective. The group delivers its advice normally within three weeks. The final advice is published on the Commission's website.

25. www.ec.europa.eu/internal_market/accounting/committees/sarg_en.htm

ARC²⁶

The ARC is composed of representatives from the Member States and chaired by the European Commission. The Committee has been set up by the Commission in accordance with the requirements contained in Article 6 of the IAS Regulation (EC/1606/2002)²⁷.

The function of the Committee is a regulatory one and consists in providing an opinion on the Commission proposals to adopt an IFRS as envisaged under Article 3 of the IAS Regulation²⁸.

ESMA (CESR was ESMA's predecessor)²⁹

An independent Committee of European Securities Regulators (CESR) was established under the terms of the European Commission's Decision of 6 June 2001 (2001/527/EC) which was repealed and replaced by the Commission Decision of 23 January 2009 (2009/77/EC). It is one of the two committees envisaged in the Final Report of the Committee of Wise Men on the regulation of European securities markets, chaired by Baron Alexandre Lamfalussy. The report itself was endorsed by Heads of State in the European Council (Stockholm Resolution of 23 March 2001) and the European Parliament (European Parliament Resolution of 5 February 2002 Ref:EPResolutions).

ESMA took charge from 1 January 2011 in accordance with regulation No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 amending decision No. 716/2009/EC and repealing Commission decision 2009/77/EC.

ESMA is an independent EU Authority that contributes to safeguarding the stability of the European Union's financial system by ensuring the integrity, transparency, efficiency and orderly functioning of securities markets, as well as enhancing investor protection.

26. www.ec.europa.eu/internal_market/accounting/committees_en.htm

27. Annexure 11 — ED IAS regulation.

28. Annexure 11 — EU IAS regulation

29. <http://www.esma.europa.eu>

In summary, the role of ESMA is to:

- Foster supervisory convergence both amongst securities regulators, and across financial sectors by working closely with the other European Supervisory Authorities competent in the field of banking (EBA), and insurance and occupational pensions (EIOPA).
- Contribute to the development of a single rule book in Europe on securities legislation. This serves two purposes namely ensures the consistent treatment of investors across the Union, enabling an adequate level of protection of investors through effective regulation and supervision as well as promotes equal conditions of competition for financial service providers.
- Strengthen international supervisory co-operation as part of its role in standard setting and reducing the scope of regulatory arbitrage,
- Undertake the supervision of certain entities with pan-European reach where requested in European law. Contribute to the financial stability of the European Union, in the short, medium and long-term, through its contribution to the work of the European Systemic Risk Board, which identifies potential risks to the financial system and provides advice to diminish possible threats to the financial stability of the Union.
- Responsible for coordinating actions of securities supervisors or adopting emergency measures when a crises situation arises.

Interaction with IASB³⁰

The IFRS Foundation is an independent, not for profit private sector organisation working in the public interest. Its principle objectives are:

- to develop a single set of high quality, understandable, enforceable and globally accepted international financial

30. <http://www.ifrs.org/The+organisation/IASCF+and+IASB.htm>

reporting standards (IFRS) through its standard-setting body, the IASB

- to promote the use and rigorous application of those standards
- to take account of the financial reporting needs of emerging economies and small and medium-sized entities (SMEs) and
- to bring about convergence of national accounting standards and IFRS to high quality solutions.

The governance and oversight of the activities undertaken by the IFRS Foundation and its standard-setting body rests with its Trustees, who are also responsible for safeguarding the independence of the IASB and ensuring the financing of the organisation. The Trustees are publicly accountable to a Monitoring Board of public authorities.

The IASB is the independent standard-setting body of the IFRS Foundation. Its members (currently 15 full-time members) are responsible for the development and publication of IFRS, including the IFRS for SMEs and for approving Interpretations of IFRS as developed by the IFRS Interpretations Committee (formerly called the IFRIC). All meetings of the IASB are held in public and webcast. In fulfilling its standard-setting duties the IASB follows a thorough, open and transparent due process of which the publication of consultative documents, such as discussion papers and exposure drafts, for public comment is an important component. The IASB engages closely with stakeholders around the world, including investors, analysts, regulators, business leaders, accounting standard-setters and the accountancy profession.

Interaction with IOSCO

IOSCO (International Organisation of Securities Commissions) is the worldwide association of national securities regulatory commissions, such as the Securities Exchange Commission (SEC) in the United States, the Financial Services Authority in the United Kingdom, Securities Exchange Board of India (SEBI) and about 100 other similar bodies.

In May 2000 and subsequently, IOSCO endorsed 30 IASB standards for cross-border offerings and listings. However, it pointed out substantive outstanding issues and specified supplemental treatments. For example, in February 2008 IOSCO published a statement urging listed companies to provide clear and accurate information on the accounting standards used to prepare their accounts. In particular, IOSCO was concerned that investors may assume that all company accounts are generally comparable where national standards assert that they are “based on but do not fully implement IFRS”. This may result in some jurisdictions only adopting some but not all IFRS or modifying IFRS (including the effective date).

The IASB staff and the IOSCO continue to work together to resolve outstanding issues and to identify areas where new IASB standards are needed. The IOSCO representatives sit as observers on the Standards Advisory Council and the IFRS Interpretations Committee.

IFRS Implementation by Key EU Member Countries – Status in 2010

France

Full IFRS

Listed companies: As France is a member of the European Union, French listed companies have been required since 2005 to prepare their consolidated financial statements in accordance with IFRS. French companies that are requested to prepare their consolidated financial statements in accordance with IFRS are required to use IFRS “as adopted by the EU”.

Unlisted companies: Unlisted companies have the option when required by law to publish consolidated financial statements to prepare them in accordance with IFRS as adopted by the EU in lieu of consolidated financial statements prepared under French GAAP.

IFRS for SMEs

The revision of the 4th and 7th European accounting directives currently under way might give member states the opportunity to allow an option for companies to use IFRS for SMEs. However it seems unlikely that such an option will be available to French companies in the near future.

Separate financial statements

All French companies have a legal obligation to publish separate financial statements under French GAAP. Currently there is no option for preparing separate financial statements under IFRS. Several years ago, the French accounting standard setter (the Autorité des Normes Comptables or ANC) initiated a convergence process with IFRS for certain topics (e.g., tangible and intangibles assets, provisions), but this process remains incomplete in some areas due to tax and legal issues.

Local accounting standard setter

The national accounting standard setter in France has two main missions: firstly to provide French responses to the IASB's and other international bodies' consultations and secondly to improve and develop a core set of accounting standards (French GAAP) for consolidated financial statements and separate financial statements for private entities. The ANC, which is funded by the French Ministry of Economy, is monitored by a board and composed of two distinct committees (International Committee for IFRS issues and Committee for Private Entities for French GAAP issues). The committees set up working groups to deal with the technical matters and prepare related draft pronouncements submitted to and instructed by the board. These working groups are composed of representatives of preparers, users, regulators and auditors.

Local regulators

The French stock exchange regulator, the Autorité des Marchés Financiers (AMF) plays a major role in the enforcement of IFRS for French listed companies. It publishes annual "recommendations

about the application of IFRS” and has the power to question particular accounting matters and related disclosures.

Banks, insurance and mutual insurance companies are regulated by the Autorité de Contrôle Prudentiel (ACP), recently created by merging pre-existing bank and insurance supervisory authorities. This organisation has the primary responsibility for the supervision of financial risks and prudential ratios but also can make recommendations on IFRS matters.

Summary

	2005	2010
Listed entities	Consolidated IFRS-EU financial Statements	Consolidated IFRS-EU financial Statements
Unlisted entities	Option available for consolidated IFRS – EU financial Statements	Option available for consolidated IFRS – EU financial Statements
Statutory filings	Separate financial statements in French GAAP	Separate financial statements in French GAAP
Tax filings	Taxable profit is based on the separate French GAAP financial Statements with adjustments from tax laws	Taxable profit is based on the separate French GAAP financial Statements with adjustments from tax laws

Germany

Full IFRS

Listed companies: As Germany is a member of the European Union, German companies whose securities are admitted to trading on a regulated market or that have applied for an admission to such a market have been required, generally since 2005, to prepare

their consolidated financial statements in accordance with IFRS. The German law does not distinguish between industries for determining whether IFRS have to be applied. Those companies that prepare their consolidated financial statements in accordance with IFRS are required to use them “as adopted by the EU”. The EU endorsement mechanism results in a time lag between when an IFRS is issued by the IASB and when it is available for use by German companies.

Unlisted companies: If required to prepare consolidated financial statements by law, companies not required to apply IFRS have the option to prepare them in accordance with IFRS as adopted by the EU or German GAAP.

Listed and unlisted companies: German companies have to supplement their consolidated financial statements with separate financial statements prepared in accordance with German GAAP and a management report (“Lagebericht”) for consolidated and separate financial statements.

IFRS for SMEs

The revision of the 4th and 7th European accounting directives currently under way may give member states the opportunity to allow an option for companies to use IFRS for SMEs. However, it seems unlikely that an option or requirement to apply the IFRS for SMEs instead of German GAAP will be available to German companies in the near future.

Separate financial statements

All German companies have a legal obligation to prepare separate financial statements in accordance with German GAAP as codified in the German Commercial Code. Alternatively companies can choose to prepare separate financial statements under IFRS as endorsed by the EU which can be published instead of the German GAAP financial statements. It is unlikely that IFRS will replace completely German GAAP either mandatorily or optionally in the near future as separate financial statements are closely linked to legal requirements on distributions and taxation. The German

Commercial Code was revised recently and partly aligned with the accounting requirements of IFRS.

Local accounting standard setter

The Accounting Standards Committee of Germany (GASC) issues standards on consolidated financial statements under German GAAP and provides responses to the IASB's and other international bodies' consultations. It recently set up an Accounting Interpretations Committee (AIC), which issues accounting interpretations including interpretations on national IFRS issues. Furthermore, the German institute of chartered accountants ("Institut der Wirtschaftsprüfer") issues accounting guidance on selected IFRS issues for the profession. The guidance represents the opinion of the profession and auditors are required to justify their position if they deviate from this guidance.

Enforcement of IFRS and other standards

Germany has a two-tier approach for oversight of financial statements of listed companies. The first tier is the Financial Reporting Enforcement Panel (FREP), a government-appointed private institution. The second is the Federal Financial Supervisory Authority ("Bundesanstalt für Finanzdienstleistungsaufsicht"), which has sovereign authority, i.e., it is an independent government agency. The FREP analyses financial statements of listed companies. The procedures of the FREP include random sampling of the companies to be reviewed and selecting areas of emphasis in the review.

Summary

	2005	2010
Listed entities	Consolidated IFRS-EU financial statements	Consolidated IFRS-EU financial statements
Unlisted entities	Option available for consolidated IFRS – EU financial statements	Option available for consolidated IFRS – EU financial statements

Statutory filings	Option available to prepare IFRS separate financial statements as long as German GAAP consolidated financial statements are filed along with them	Option available to prepare IFRS separate financial statements as long as German GAAP consolidated financial statements are filed along with them
Tax filings	Taxable profit is based on the separate German GAAP financial statements with adjustments from tax laws	Taxable profit is based on the separate German GAAP financial statements with adjustments from tax laws

United Kingdom

Full IFRS

Listed companies: UK companies admitted to trading on EU regulated markets have been required for all accounting periods beginning on or after 1 January 2005 to prepare their consolidated financial statements in accordance with IFRS “as adopted by the EU”.

The EU endorsement mechanism means that there is normally a time lag between when an IFRS is issued by the IASB and its availability for use by UK companies.

UK companies admitted to trading on EU regulated markets have the choice of using IFRS as adopted by the EU or UK GAAP (mostly comprises UK Financial Reporting Standards as issued by the UK Accounting Standards Board (ASB)) in their individual financial statements. Tax rules in the UK were changed to accommodate the transition to IFRS as adopted by the EU in 2005.

UK companies also may be quoted on other non-EU regulated market markets such as the Alternative Investment Market (AIM).

Under the AIM rules such quoted companies have been required for all accounting periods beginning on or after 1 January 2007 to prepare their consolidated financial statements in accordance with IFRS as adopted by the EU.

Unlisted companies: Unlisted UK companies, including subsidiaries of listed companies, have the option of preparing their financial statements in accordance with IFRS as adopted by the EU or UK GAAP. In addition, small companies (as defined under the UK Companies Act) have the option of using instead the UK ASB's Financial Reporting Standard for Small Entities (FRSSE).

IFRS for SMEs

In August 2009 the ASB issued a consultation paper proposing a three-tier approach to the financial statements of UK companies being:

- Tier 1 – *publicly accountable entities* would apply IFRS as adopted by the EU.
- Tier 2 – all other UK entities (other than those who can apply FRSSE) could apply the IFRS for SMEs.
- Tier 3 – small entities could choose to continue to apply the FRSSE.

Entities within Tier 2 and Tier 3 would have the option of using IFRS as adopted by the EU if they wished, and those in Tier 3 would have the option of using the IFRS for SMEs.

The ASB's consultation paper proposed that this change be effective for accounting periods beginning on or after 1 January 2012 although the ASB has announced that it has agreed tentatively to a one year deferral for any transition that may result from the proposals.

Local accounting standard setter

The local accounting standard setter in the UK is the ASB. It is part of the Financial Reporting Council in the UK which is UK's

independent regulator responsible for promoting high quality corporate governance and reporting to foster investment.

Since the introduction of IFRS as adopted by the EU in 2005, the ASB has based its newly-issued Financial Reporting Standards on IFRS as they are issued by the IASB. This is done in order to achieve a degree of convergence to IFRS as adopted by the EU.

Therefore the active standard-setting role of the ASB has been reduced considerably since the introduction of IFRS as adopted by the EU for UK companies.

Enforcement of IFRS and other standards

The UK Financial Reporting Review Panel (FRRP), which is a part of FRC, plays a major role in the enforcement of IFRS as adopted by the EU for UK companies. It has the power to question accounting matters and related disclosures in the Financial statements of UK companies.

If the FRRP is not satisfied by the company’s explanations it aims to persuade the directors of the company to adopt a more appropriate accounting treatment. Failing voluntary correction, the FRRP can exercise its powers to secure the necessary revision of the financial statements through a court order.

Summary

	2005	2010
Listed entities	Consolidated IFRS-EU financial statements; Option available for separate financial statements	Consolidated IFRS-EU financial statements; Option available for separate financial statements
Unlisted entities	Option available for consolidated IFRS – EU financial statements except charity sector	Option available for consolidated IFRS – EU financial statements except for charity sector

Statutory filings	Choice available for IFRS – EU or UK GAAP	Choice available for IFRS – EU or UK GAAP
Tax filings	Taxable profit is based on the separate Financial statements (IFRS-EU or UK GAAP) with adjustments from tax laws.	Taxable profit is based on the separate Financial statements (IFRS-EU or UK GAAP) with adjustments from tax laws

The Netherlands

Full IFRS

Listed companies: Dutch listed companies have been required since 2005 to prepare their consolidated financial statements in accordance with IFRS. Dutch companies preparing their financial statements in accordance with IFRS are required to use IFRS “as adopted by the EU”. The EU endorsement mechanism means that there is a time lag between when an IFRS is issued by the IASB and its availability for use by Dutch companies. Listed companies have the choice of using IFRS or Dutch GAAP in their separate financial statements. Dutch law also permits separate financial statements to be prepared applying all recognition and measurement principles of IFRS, and applying presentation and disclosure principles of Dutch GAAP. This latter option is widely used in the Netherlands.

Unlisted companies: Unlisted companies, including subsidiaries of listed companies, have the option of preparing their consolidated and separate financial statements in accordance with IFRS as adopted by the EU or Dutch GAAP. If consolidated financial statements are prepared under Dutch GAAP, then the separate financial statements also have to be prepared under Dutch GAAP. In addition, small companies have the option of using tax recognition and measurement requirements for preparing their financial statements.

IFRS for SMEs

Thus, based on the developments in the European Union Legislation, necessary changes in the Dutch laws will be made, which is considered necessary to enable adoption of IFRS for SMEs. Thus, although under consideration, currently there are no plans to adopt IFRS for SMEs in the Netherlands.

Local accounting standard setter

The local accounting standard setter in the Netherlands is the Dutch Accounting Standards Board (DASB). Until the introduction of IFRS in the Netherlands in 2005, amendments to Dutch GAAP generally were intended to reduce differences between both reporting frameworks. However, since the adoption of IFRS the difference between Dutch GAAP and IFRS has increased in a number of areas, either because changes were made to Dutch GAAP in areas where IFRS have not changed, or because changes to IFRS were not mirrored in Dutch GAAP. Areas in which significant differences apply include financial instruments, pension accounting and business combinations.

Summary

	2005	2010
Listed entities	Consolidated IFRS-EU financial statements; Option available for separate financial statements	Consolidated IFRS-EU financial statements ; Option available for separate financial statements
Unlisted entities	Option available for consolidated IFRS – EU financial statements	Option available for consolidated IFRS – EU financial statements except for charity sector
Statutory filings	Choice available for IFRS or Dutch GAAP	Choice available for IFRS or Dutch GAAP
Tax filings	Taxable profit is based on the local tax accounting principles	Taxable profit is based on the local tax accounting principles

Implementation by Few Other Countries

IFRS Implementation in Australia

Full IFRS

Australia adopted International Financial Reporting Standards (IFRS) from 1 January 2005. IFRS were adopted by incorporating them into national GAAP for all entities, not just listed entities. The local accounting standard setter in Australia is the Australian Accounting Standards Board (AASB).

The AASB has issued 'Australian equivalents to IFRS' (Australian Accounting Standards), numbering IFRS standards as AASB 1-8 and IAS standards as AASB 101-141. Australian equivalents to SIC and IFRS interpretations (IFRIC) also have been issued, along with a number of 'domestic' standards and interpretations.

The AASB modifies IASB pronouncements in compiling Australian Accounting Standards only to introduce additional disclosures or implement requirements for not-for-profit entities, rather than departing from IFRS. A current project is likely to reduce the level of additional disclosures. The AASB mirrors changes made by the IASB as local pronouncements without any time lag in effective dates, although most Australian companies have a 30 June balance date, which results in adopting standards six months later than they are adopted in the northern hemisphere.

Accordingly, for-profit entities that prepare financial statements in accordance with Australian Accounting Standards are generally able to make an unreserved statement of compliance with IFRS unless an Australian-specific interpretation is applied.

IFRS for SMEs

The IFRS for SMEs which was issued in July 2009 by the IASB cannot be applied in Australia currently. However, the AASB is currently considering how it fits into the Australian framework for financial reporting.

Local accounting standard setter

Issues on the IASB work program and the IFRS Interpretations Committee work program also are included on the AASB work

program, although the degree of involvement by the AASB varies issue-by-issue.

When an issue has been added to the agenda, the AASB will discuss agenda papers developed and presented by AASB staff. The agenda papers address the scope of issues, alternative approaches, and timing of outputs. They may draw upon relevant material from other standard setters, including the IASB, International Public Sector Accounting Standards Board (IPSASB) and the New Zealand Financial Reporting Standards Board (FRSB), or from other organisations.

Most issues are considered jointly with the FRSB where they are of significance in both countries, in order to develop comparable requirements.

Implementation and compliance

The AASB monitors implementation of accounting standards and interpretations in Australia through feedback mechanisms with several regulatory organisations including the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA). This may lead to revisions to domestic AASB standards or to submissions to the IASB or the IPSASB to propose changes to international standards.

Summary

	2005	2010
Listed entities	Consolidated IFRS financial statements	Consolidated IFRS-financial statements
Unlisted entities	If reporting entity then follow IFRS	If reporting entity then follow IFRS
Statutory filings	Based on IFRS	Based on IFRS
Tax filings	IFRS has been mandated for all entities, not just listed entities since 2005. Taxable profit is based on the local tax accounting principles	IFRS has been mandated for all entities, not just listed entities since 2005. Taxable profit is based on the local tax accounting principles

IFRS implementation by Canada

Canada is adopting IFRS as issued by the IASB from 1 January 2011 by incorporation of IASB IFRS into Canadian GAAP via the CICA Handbook – Accounting (the Handbook). From 2011 the Handbook will consist of the following parts:

Part	Standards
Part I	IFRS as issued by the IASB
Part II	Accounting Standards for Private Enterprises
Part III	Accounting Standards for Not-for-profit Organizations
Part IV	Accounting Standards for Pension Plans

Publicly accountable enterprises

All publicly accountable enterprises (PAEs) are required to adopt IFRS as issued by the IASB as incorporated into Part I of the Handbook for fiscal years beginning on or after 1 January 2011; early adoption is permitted, but only with the specific regulatory approval from the Canadian Securities Administrators (CSA). A PAE is defined as an entity, other than a not-for-profit organisation or a government or other entity in the public sector, that:

- has issued, or is in the process of issuing, debt or equity instruments that are or will be outstanding and traded in a public market; or
- holds assets in a fiduciary capacity for a broad group of outsiders as one of its primary businesses.

In their financial statements and accompanying audit report, PAEs may claim compliance with either:

- IFRS as issued by the IASB; or
- IFRS as issued by the IASB and Canadian GAAP for PAEs (i.e., IASB IFRS as incorporated into Part I of the Handbook).

PAEs that also are US Securities and Exchange Commission registrants have the option of reporting under either IFRS as issued by the IASB beginning on or after 1 January 2011 or to report under US GAAP.

Private enterprises

The IFRS for Small and Medium-Sized Enterprises will not be adopted in Canada. Instead, private enterprises must choose between the adoption of either:

- IFRS as issued by the IASB as incorporated into Part I of the Handbook or
- Accounting standards for private enterprises developed in Canada (i.e., Part II of the Handbook).

The accounting standards for private enterprises developed in Canada largely are based on Canadian GAAP prior to the incorporation of IASB IFRS, and simplify the recognition, measurement and presentation in complex areas (i.e., financial instruments) as well as reduce required disclosures. At this time, there is no plan to align the accounting standards for private enterprises as developed in Canada with IASB IFRS. Private enterprises are required to select their financial reporting framework for fiscal years beginning on or after 1 January 2011; early adoption of their selected framework is permitted.

Government entities

While government entities are excluded from the definition of a PAE, the Public Sector Accounting Board also is requiring government business enterprises to adopt IASB IFRS as incorporated into Part I of the Handbook (i.e., the same financial reporting framework as PAEs) for fiscal years beginning on or after 1 January 2011.

Not-for-profit organisations

Not-for-profit organisations may apply either:

- IFRS as issued by the IASB (as incorporated into Part I of the Handbook); or
- Part III of the Handbook.

Part III of the Handbook largely will be based on previous Canadian GAAP for not-for-profit organisations (i.e., 4400 series of the Handbook) and was issued for comment on 3 March 2010. The final standard is expected to be issued in late 2010.

Pension plans

Pension plans are required to adopt Part IV of the Handbook - Section 4600 Pension Plans, which largely is based on previous Canadian GAAP for pension plans. Pension plans are not permitted to apply IAS 26 *Accounting and Reporting by Retirement Benefit Plans*.

Local accounting standard setter

Accounting standards and guidance governing financial accounting and reporting in Canada are developed by the Accounting Standards Board (AcSB). The AcSB is a part of Canadian Institute of Chartered Accountants (CICA). The AcSB is overseen by the Accounting Standards Oversight Council which appoints members to provide input and to assess and report on the performance of the AcSB.

The AcSB issues discussion papers and exposure drafts for comment in Canada when they are issued by the IASB. The AcSB may request supplemental input from Canadian respondents on Canadian-specific issues relevant to the discussion paper or exposure draft; such comments are provided to the AcSB while all other comments are sent directly to the IASB with a copy to the AcSB. The AcSB plans to incorporate IASB standards and interpretations shortly after being issued by the IASB into Part I of the Handbook.

The Emerging Issues Committee (EIC) was established by the AcSB in 1988 to review emerging accounting issues that resulted either in divergent or unsatisfactory application in practice in the absence of explicit guidance in Canadian GAAP. As a result of the transition to IFRS, the EIC was disbanded as of 1 April 2010.

The IFRS Discussion Group was established by the AcSB in 2009 to consider issues arising from the application of IFRS in Canada and to make recommendations on the referral of such issues to either to the IASB or IFRIC for further discussion.

IFRS implementation in Brazil

The move to IFRS in Brazil started in 2006 when the Brazilian Central Bank (BACEN) required certain financial institutions to present consolidated financial statements in accordance with IFRS by 2010. The Brazilian Securities and Exchange Commission (CVM) then decided in 2007 to require all listed public companies to present consolidated financial statements in accordance with IFRS by 2010.

Companies are required to follow the IFRS as issued by the International Accounting Standards Board (IASB). However, Brazilian GAAP (BR GAAP) statutory individual financial statements still are required for entities reporting under IFRS for consolidated financial statement purposes.

Convergence of BR GAAP and IASB IFRS

The Brazilian congress approved in December 2007 a law that allows for the convergence of BR GAAP to IFRS. The law establishes that accounting pronouncements issued by the Brazilian Accounting Pronouncements Committee (CPC) must be in line with the IFRS issued by the IASB.

At present the CPC has issued, and the regulatory bodies have endorsed, substantially all BR GAAP standards equivalent to IFRS and IFRICs. These BR standards are effective for annual financial statements for periods starting on or after 1 January 2010, with early adoption permitted. As a result, BR GAAP has converged with IASB IFRS.

Therefore BR GAAP used by public listed companies and large private enterprises in their statutory financial statements is in accordance with IASB IFRS, except for the application of the equity method in the separate financial statements (parent company financial statements) and for expenditures previously capitalised under the prior version of BR GAAP which will be amortised over their expected useful life, if any (optional temporary difference).

In addition, the CPC has imposed some restrictions on the alternative treatments given by IASB IFRS (e.g., revaluation option for property, plant and equipment is not permitted in Brazil, less options at first time adoption). Since the CPC's actions mandate treatments that are permitted by IFRS, these additional requirements do not prevent compliance with IFRS.

In accordance with the memorandum of understanding between the IASB, CPC and the Brazilian Federal Council of Accounting (CFC) signed in January 2010, the goal is to eliminate the remaining differences between BR GAAP and IFRS and engage in efforts to obtain regulatory endorsement of any resulting changes to BR GAAP by the end of 2010.

IFRS for SMEs

The CPC has issued the CPC PME, a translated version of the IFRS for Small Entities, in December 2009. This pronouncement is effective for financial years starting 1 January 2010 and, if elected as an alternative to full adoption of all CPC standards, can be applied by small and medium companies when preparing statutory financial statements.

However, it appears that full incorporation of the CPC PME will require several years in part because small and medium companies often prepare their accounting records based on fiscal (tax) rules and there are no legal mechanisms in place to enforce compliance for such companies. Nevertheless, it is expected that when such entities evolve and start looking for diversified finance sources for example, banks will require financial statements prepared in accordance with CPC PME or full BR GAAP as a condition for borrowing.

IFRS implementation in Japan

Currently Japan is committed to convergence with IFRS and working actively on projects to achieve this goal. However, Japan is considering adoption of IFRS and an IFRS Roadmap has been adopted by the Financial Service Agency (FSA), which regulates the Japanese stock markets. A final decision regarding adoption of IFRS is expected to be made by around 2012. In the meantime, Japanese companies have been permitted to adopt IFRS for their consolidated financial statements from fiscal years ending on or after 31 March 2010.

Use of an IFRS is subject to approval of the standard by the FSA. Before making a decision to designate an IFRS for use in Japan the FSA conducts a public consultation, generally on batches of IFRS. The list of "Designated IFRS" includes all IFRS and IFRIC interpretations issued by the IASB on or before 31 December 2009, which can be used in the voluntary adoption of IFRS in Japan.

A survey of listed companies in October 2009 by the Tokyo Stock Exchange, just three months after the IFRS Roadmap was published, revealed that 56 listed companies with international activities plan to adopt IFRS voluntarily.

The FSA also has decided that the current treatment whereby certain Japanese listed companies are allowed to prepare their financial statements in accordance with US generally accepted accounting principles (US GAAP) will be discontinued for fiscal years ending after 31 March 2016.

Awareness of IFRS in Japanese companies increased in 2008 when changes were made to Japanese accounting requirements for consolidated financial statements. Prior to 2008, under Japanese generally accepted accounting standards (J-GAAP), consolidated financial statements could include financial statement for subsidiaries outside Japan prepared a basis other than J GAAP (e.g., US GAAP). However, from 2008 the financial statements of all subsidiaries out side Japan have to be prepared using J GAAP, US GAAP or IFRS. As a result a number of subsidiaries of Japanese companies adopted IFRS even though IFRS are not used for reporting by the consolidated group financial statements.

IFRS Council

The IFRS Council was established in order to implement a plan for adopting IFRS. It has four major members, which are the Accounting Standards Board of Japan (ASBJ) and its oversight foundation; the Japanese Institute of CPAs; the Tokyo Stock Exchange; and the Japan Business Federation (Nippon Keidanren).

The objective of the IFRS Council is to identify issues concerning implementation of IFRS, and establish overall policies and strategies. It has the following committees:

- The International Affairs Committee for IASB which deliberates upon a 'strategy and specific actions as to how best to influence developments of major accounting standards';
- the Education and Training Committee which is developing a plan for an education and training system of IFRS;
- the Translation Committee, which is developing plans for a system for Japanese translation of IFRS;
- the Committee for Separate Financial Statements, which is discussing how separate financial statements can be simplified, given the current focus on consolidated financial statements; and
- the Public Relations Committee.

Local accounting standard setter

Accounting standards developed by the ASBJ have to be authorised by the FSA as part of J-GAAP.

The ASBJ develops accounting standards and implementation guidance to reflect the environment in which business enterprises operate. The ASBJ also communicates with its foreign counterparts and contributes to the development of global accounting standards.

The 'Tokyo Agreement', a joint declaration announced by the ASBJ and the IASB, sets out an initiative to accelerate a convergence

programme for IFRS and Japanese GAAP in order to eliminate by June 2011 major differences between Japanese GAAP and current IFRS in use at 2008.

Abbreviations

AASB	Australian Accounting Standards Board
ACP	Autorité de Contrôle Prudentiel (Banks, insurance and mutual insurance companies regulator)
AcSB	Canadian Accounting Standards Board
AIC	Accounting Interpretations Committee
AIM	Alternative Investment Market
AMF	Autorité des Marchés Financiers (French stock exchange regulator)
ANC	Autorité des Normes Comptables (French accounting standard setter)
APRA	Australian Prudential Regulation Authority
ARC	Accounting Regulatory Committee
ASB	UK Accounting Standards Board
ASBJ	Accounting Standards Board of Japan
ASIC	Australian Securities and Investments Commission
BACEN	Brazilian Central Bank
BR GAAP	Brazilian Generally Accepted Accounting Principles
CESR	Committee of European Securities Regulators
CPC	Brazilian Accounting pronouncements Committee
CPC PME	A translated version of the IFRS for Small entities

CSA	Canadian Securities Administrators
CVM	Brazilian Securities and Exchange Commission
DASB	Dutch Accounting Standards Board
EC	European Commission
EFRAG	European Financial Reporting Advisory Group
EIC	Emerging Issues Committee (Canada)
ESC	European Securities Committee
ESMA	European Securities and Markets Authority
EU	European Union
FASB	US Financial Accounting Standards Board
FESCO	Forum of European Securities Commission
FREP	Financial Reporting Enforcement Panel
FRRP	UK Financial Review Panel
FRSB	New Zealand Financial Reporting Standards Board
FRSSE	UK ASB's Financial Reporting Standard for Small Entities
FSA	Financial Service Agency (Japan)
GASC	The Accounting Standards Committee of Germany
IAS	International Accounting Standards
IASB	International Accounting Standards Board
IASC	International Accounting Standards Committee
IFRIC	IFRS Interpretations Committee

IFRS	International Financial Reporting Standards
IOSCO	International Organisation of Securities Commission
IPSASB	International Public Sector Accounting Standards Board
J-GAAP	Japanese Generally Accepted Accounting Principles
MoU	Memorandum of Understanding
ENSS	European National Standards Setters
PAEs	Publicly Accountable Enterprises
SARG	The Standards Advice Review Group
SEC	Securities and Exchange Commission
SIC	Standing Interpretations Committee
SMEs	Small and Medium Entities
TEG	Technical Expert Group of EFRAG

Webliography

- 1 The Institute of Chartered Accountants of England and Wales website www.icaew.com
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- 3 The EFRAG website www.efrag.org
- 4 The IFRS Foundation and the IASB website www.ifrs.org
- 5 The CESR website www.cesr-eu.org
6. The ESMA website www.esma-europa.eu

Annexure 1

COMMISSION OF THE EUROPEAN COMMUNITIES



Brussels, 13.06.2000
COM(2000) 359 final

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

EU Financial Reporting Strategy : the way forward

Communication from the Commission to the Council and the European Parliament

EU Financial Reporting Strategy : the way forward

Executive summary

The Lisbon European Council Conclusions have underlined the importance of an efficient and transparent capital market for fostering growth and employment in the EU. Globalisation and information technology developments have created a unique momentum to realise a single, efficient and competitive EU securities market. In order to accelerate the completion of a single securities market, urgent action in the field of financial reporting is required to enhance comparability of financial statements, as requested by the European Council in Lisbon. The present Communication includes the following key actions

- **Before the end of 2000**, the Commission will present a formal proposal requiring all listed EU companies to prepare their consolidated accounts in accordance with one single set of accounting standards, namely International Accounting Standards (IAS). This requirement will enter into effect, at the latest, from 2005 onwards. Member States will be allowed

to extend the application of IAS to unlisted companies and to individual accounts. This proposal will also contain transitional arrangements to encourage the early take-up of IAS together with the rules for the establishment of an EU endorsement mechanism, which will:

- (i) oversee the integration of IAS in the EU, and
- (ii) confirm that IAS will represent an appropriate basis for financial reporting by EU listed companies

The endorsement mechanism will consist of a two-tier structure; a political level and a technical level.

- The development of an enforcement infrastructure that will ensure rigorous application by listed EU companies of International Accounting Standards confirmed by the endorsement mechanism. The key focus will be on disseminating implementation guidance, encouraging high quality audit and reinforcing coordinated regulatory oversight.
- **Before the end of 2001**, the Commission will bring forward a proposal to modernise the Accounting Directives so they can remain the basis for financial reporting for all limited liability companies.

The Commission is seeking the urgent agreement of the Council and the European Parliament for its overall approach for this strategy.

Introduction

1. The Lisbon European Council¹ underlined the key importance of a single financial market in contributing to the Union's central objectives of growth and high employment. The European Council conclusions underlined the need to accelerate the completion of the Internal Market for Financial Services and set deadlines of 2005 and 2003 respectively to implement the Financial Services and Risk Capital Action Plans. The essence of the Lisbon

¹ Pts.20, 21 Presidency Conclusions from the Lisbon European Council (23 and 24 March 2000).

conclusions was derived from the Financial Services Action Plan² and the Commission's Communications on Financial Services³ and Risk Capital⁴ - each of which call for the development of deep and liquid European capital markets to benefit both issuers and investors.

2. Among the priority objectives mentioned in the Lisbon European Council Conclusions is the need to enhance the comparability of companies' financial statements to benefit companies and investors. To achieve this objective, the Union requires common financial reporting standards - standards that are transparent, fully understood, properly audited and effectively enforced. Only with such standards will there be potential to allow the EU securities markets to grow from its present level of around half the size of the US capital markets.

3. Member States' securities markets are in a period of dramatic change and increasing consolidation, driven by new technologies, globalization and the effect of the Euro. The rapid development of information and communication technologies and, in particular, electronic trading platforms, are changing how transactions take place and the way financial information is disseminated. Financial reporting itself is also changing. Internet financial reporting facilitates access to information by investors, enhances analysis and the comparison of information. Increasingly investors want to make decisions on the basis of a continuum of standardised company financial and non-financial information. Similarly, periodic financial reporting also has a crucial role to ensure transparency, provide safeguards for investors and contribute to the overall stability of markets.

International Accounting Developments

4. There are currently many different financial reporting rules and differing interpretations based on distinct traditions within the

² COM (1999) 232, 11.05.99 *"Financial Services: Implementing the Framework for Financial Services Action Plan"*.

³ COM (1998) 625, 28.10.98 *"Financial Services: Building a Framework for Action"*.

⁴ SEC (1998) 552 final, 31.03.98 *"Risk Capital: A key to job creation in the European Union"*.

European Union. Unless reform is undertaken, inconsistencies - many of them of major importance - will continue. European financial reporting will remain fragmented, thereby hampering the development of a deep liquid single EU capital market.

5. Standard setting itself is evolving rapidly. There is a strong pressure towards the convergence of accounting standards, raising the importance of international standard setting and thereby encouraging national standard setters to cooperate more closely. The Commission's *"New Accounting Strategy"*⁵ focused on the need to facilitate the access of European global players to international global capital markets by advocating the use of International Accounting Standards (IAS). The Commission supported the efforts of the International Accounting Standards Committee (IASC) and the International Organization of Securities Commission (IOSCO) to create a single body of financial reporting standards that could be used for listing purposes around the world. The core set of standards contained in the agreement between IASC and IOSCO has now been finalised. IOSCO announced on 17 May 2000 the completion of its assessment of IAS and recommended its members to allow multinational issuers to use IAS for the preparation of their financial statements for cross-border offerings and listings.

6. Recently, major developments have also taken place within the IASC itself. Its new organisational structure should become effective next year driven by a clear determination to make IAS the highest quality, comprehensive accounting standards for use in capital markets throughout the world.

The EU Strategy

7. This Communication sets out the Commission's views on the broad lines of the Union's future approach to financial reporting. The Commission seeks broad political endorsement of this approach so that it can prepare proposals to introduce the strategy by the end of this year. A central objective - and one against which

⁵ COM (1995), 14.11.95 *"Accounting Harmonisation: A new strategy vis-a-vis international harmonisation"*.

success can be measured - is that the policy should ensure that securities can be traded on EU and international financial markets on the basis of a single set of financial reporting standards. It will also be crucial that the strategy be firmly anchored to best international practice.

8. Sound financial reporting remains at the heart of the Commission's approach. Relevant, timely, reliable and comparable information about the performance and financial position of an enterprise continues to be of central importance in safeguarding the interests of investors, creditors and other stakeholders to ensure a level playing field between competitors. Financial statements underpin the entire system of market information. They are the vital link between issuers and investors and are essential to deliver the high level of comparability the EU needs for a single securities market. Agreed accounting standards must be properly applied and enforced to ensure efficient markets. Accounting standards have to be enforced at an equivalent level throughout the EU and the world. Authoritative guidance must thus be available to assist preparing these financial reports.

Financial Reporting in the EU

9. Whilst the EU's Accounting Directives remain the basis of the EU's accounting rules for limited liability companies, our existing directives do not meet the needs of companies that wish to raise capital on pan-European or international securities markets. This is because transparency, comparable financial reporting and more demanding disclosure requirements for listed companies are being sought by both investors and supervisors.

10. The present diversity of accounting approaches in the EU results from the many options being available in the Directives and from different levels of enforcement throughout the EU. Adaptation of financial statements to take account of local legal and tax conventions was justifiable when investors and other stakeholders were generally of the same nationality as the company. But today the securities of any one company tend increasingly to be held by an internationally diverse group of investors. The interests of investors from another Member State are not served by having to

interpret, or decipher, financial statements prepared in accordance with the local conventions of the country where the company is incorporated.

11. EU legislation is also silent on many aspects of accounting thereby permitting, by default, differing national specifications. National authorities may also allow companies to prepare their accounts on the basis of internationally accepted financial reporting frameworks (IAS or US-GAAP - Generally Accepted Accounting Principles - in the United States), provided they conform with the Accounting Directives. It is not unusual for different companies to report to different accounting standards within the same Member State and even on the same stock exchange. The co-existence of different reporting frameworks is both confusing and costly. It makes effective supervision and enforcement of financial reporting requirements of publicly traded companies more difficult. Investors are deprived of comparable accounts and therefore essential information. Cross border trade is hampered. In short, the result is market fragmentation that puts EU securities markets globally at a severe competitive disadvantage.

12. With the accelerating pace of business the need for a more dynamic and responsive legislative framework for financial reporting increases. The Union's lengthy legislative processes need close examination to ensure they meet the challenges of the market.⁶ Ways to move from the rigid, sometimes overly-prescriptive nature of EU directives to a more efficient and responsive system for financial reporting best suited to the needs of securities markets have to be considered.

A New Way Forward

A single set of financial reporting standards

13. The Lisbon European Council set the goal of a fully integrated financial services market by 2005. The starting point is comparable

⁶ COM (1999) 232, 11.05.99 "*Financial services: Implementing the Framework for Financial Markets: Action Plan*" Section IV, states that EU solutions must be characterised by a degree of flexibility so that they are not immediately rendered obsolete by the pace of change in the markets. This objective is put at risk by the length of time needed formally to agree legislative solutions.

financial reporting. The accounting standards chosen must meet investors' needs and be compatible with global developments. An internationally recognized financial reporting framework is essential for financial reporting by listed EU companies.

14. There are two financial reporting frameworks, currently in use in the EU⁷ that could provide internationally recognized standards: US GAAP and IAS. Both are investor-oriented financial reporting systems that provide generally equivalent levels of investor protection. There are, however, numerous differences in their practical reporting requirements.

15. Although market forces could be left to determine the preferred set of reporting standards, this would cause delay by prolonging, unnecessarily, the period of competition between competing standards. In the interim, costs would not be reduced, nor transparency be improved. Delay could also undermine the Lisbon European Council's goal of enhancing EU-wide comparability of financial statements by 2005.

In its 1995 Accounting Strategy⁵ the Commission expressed its preference for IAS as the set of standards for EU companies wishing to raise capital on an international and pan-European basis. Since then, the IASC has undertaken a gradual, but in-depth process of revision of its standards. Already IAS provides a comprehensive and conceptually robust set of standards for financial reporting that should serve the needs of the international business community. IAS also has the distinct advantage of being drawn up with an international perspective, rather than being tailored to the US environment. US GAAP, on the other hand, is voluminous and is based on very detailed rules and interpretations. Considerable education and training is necessary in order to use its standards. In the US its effective application stems largely from the strong regulatory and enforcement powers exercised by the US Securities and Exchange Commission. The European Union does not, of course, have influence on the elaboration of US GAAP.

⁷ In 1998, some 210 EU companies reported in accordance with IAS while 235 reported under US GAAP. Most recent statistics issued by the IASC show that at present 275 EU companies use IAS.

Application of IAS — the Scope

16. The Commission proposes that **all EU companies listed** on a regulated market⁸ (estimated at around 6,700) should be required to prepare consolidated accounts in accordance with IAS. Within two years this requirement should be extended to all companies preparing a public offer prospectus⁹ in accordance with the Listing Particulars Directive¹⁰. Unlisted companies planning to make an initial public offering of its securities might also wish to use IAS. The Commission therefore proposes that Member States be permitted either to require or to allow **unlisted companies** to publish financial statements in accordance with the same set of standards as those for listed companies. More specifically for **unlisted financial institutions and insurance companies**, Member States may wish to extend the requirement to apply IAS to facilitate sector wide comparability and to ensure efficient and effective supervision¹¹.

17. The requirement to use IAS relates to the consolidated accounts of listed companies. As far as the national statutory individual accounts are concerned, regulatory and tax requirements could make the use of IAS inappropriate or even invalid. Nevertheless, whenever possible, the Member States should encourage even to the point of requiring the use of IAS for individual accounts as well. This would facilitate the preparation of consolidated accounts in the future.

⁸ Within the meaning of Article 1(13) of Council Directive of 10 May 1993 (93/22/EEC OJ L 141 11.06.93 P.27) on investment services in the securities field

⁹ Regulated by Council Directive of 17 April 1989 (89/298/EEC OJ L 124 05.05.89 P.8) coordinating the requirements of the drawing-up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public.

¹⁰ Council Directive of 17 March 1980 (80/390/EEC OJ L 100 17.04.80 P.1) coordinating the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock exchange listing.

¹¹ The Commission proposal does not address supervisory issues and the specific information required by supervisory authorities. The implementation of the proposal should not lead to a lessening of the prudential requirements for regulated entities.

Shelf-registration

18. The Commission is examining the importance of linking the approach outlined above with its forthcoming actions to modernize the existing Prospectus Directives¹² which will involve, probably a greater use of “*shelf-registration*” procedures for EU securities issuers. At the heart of shelf-registration is a “*reference document*” (supplemented with a “*securities note*”) which would be filed with the relevant national authorities. The objective of shelf-registration is to secure access to other Member State markets by means of a common registration system based on comparable market information, including financial information. Basing shelf-registration on one set of transparent, international accounting standards for financial reports would not only simplify matters for the companies concerned, but would also contribute to enhancing market dynamism throughout European financial markets.

The necessary infrastructure required for the new accounting strategy

19. This strategy will need to take full account of public policy interests. The European Union cannot delegate responsibility for setting financial reporting requirements for listed EU companies to a non-governmental third party. In national jurisdictions, competent authorities can delegate the drafting of accounting standards to a national standard setting body having defined its governance structure. To achieve legal certainty for users of IAS in the European Union, international standards must be integrated into the EU financial reporting legislative framework. EU authorities must have the means to exercise the necessary regulatory oversight and correct any material deficiencies or concerns in relation to IAS.

Exercising oversight

20. In order to provide for the necessary public oversight, an EU endorsement mechanism is needed. The role of that mechanism

¹² See Financial Services Action Plan COM(1999) 232, (11.04.99).

is not to reformulate or replace IAS, but to oversee the adoption of new standards and interpretations, intervening only when these contain material deficiencies or have failed to cater for features specific to the EU environment. The IAS used in the EU will be the standards endorsed by this mechanism.

21. The central task of this mechanism should be to confirm that IAS are in full conformity with the Union's overall approach - more specifically, if there is conformity with the EU's Accounting Directives and that a suitable basis for financial reporting by listed EU companies is provided. There would, however, be a presumption that IAS meet these needs: the mechanism would confirm that this presumption is right.

22. The endorsement mechanism should have a two-tier structure - one at political level and the other at technical level - to ensure sufficient EU public oversight. The Commission will present a proposal on the structure and institutional aspects of this two-tier endorsement mechanism later this year. The proposal will pay particular regard to the mechanism's legal status, powers, detailed composition and possible involvement of securities regulators.

The technical level will need to be under control set at a political level. This control will have to be based on appropriate EU institutional arrangements under established comitology rules. **At the technical level** a group of highly qualified experts should be nominated. They should be selected on the basis of their knowledge of EU and international financial reporting requirements. In addition, specialised ad hoc groups may be necessary to deal with particularly complex issues or where there are standards that could have a particular impact on supervisory and prudential issues (in particular with regard to banks, other financial institutions and insurance companies). Not only should they scrutinise IAS, they should provide input into the IASC standard setting process at all stages, particularly in the early phases.

23. The endorsement mechanism will ensure that IAS, in practice, can be applied in the EU environment. It will, in particular, need to identify whether there is a need for specific implementation guidance to ensure a common and consistent application of the standards.

This should not mean revisiting the general interpretations on IAS: the Standing Interpretations Committee (SIC) of the IASC has this function. The objective must be to establish a constructive, dedicated and continuous dialogue with the IASC, in particular with the SIC, when implementation guidance is required. This task will require coordination with national standard setters and, in particular, with securities markets supervisors.

24. The endorsement mechanism will confirm the dates by which new IAS apply within the EU. It may conclude that additional disclosures are necessary or certain options set out in a particular standard do not conform with the EU Accounting Directives. The mechanism would advise the Commission whether or not an amendment to the Directives is recommended in the light of international accounting developments.

25. Objections to IAS - probably infrequent - would have to be substantiated and publicly recorded. Recommendations made at the technical level on a particular IAS standard will need ratification at the political level. To avoid such a situation concerns about emerging IAS will need to be expressed at the earliest stage in the IASC's drafting process. Indeed, the Union will need to develop internal coordination at all stages of the IAS standard setting process not least to influence the debate. The endorsement mechanism can help coordinate the European position within the IASC.

Enforcement infrastructure

26. Clearer internationally-based accounting standards and increased comparability in the financial reporting requirements for listed companies will greatly simplify enforcement particularly in the securities markets.

However, only IAS that are properly and rigorously enforced will improve the functioning of the EU securities market. Enforcement comprises a cascade of different elements including (1) clear accounting standards (2) timely interpretations and implementation guidance, (3) statutory audit, (4) monitoring by supervisors and (5) effective sanctions. Each of these must work efficiently : the system

will be as strong as its weakest part in delivering strong investor and creditor protection.

27. If this framework is to provide high quality financial reporting, the statutory audit function, which ensures a proper application of accounting standards, will need to be carried out to uniformly high levels across the EU. This requires giving urgent attention to the establishment of benchmarks for auditing, the development of professional ethics standards and the implementation of effective quality assurance systems for the statutory audit function. The Commission will issue a Recommendation on Quality Assurance for Statutory Audit. Further work of the EU Committee on Auditing will also be undertaken to determine a common approach for auditing standards and professional ethics.

28. Securities supervisors also have a critical role in ensuring that listed companies comply with financial reporting requirements. There is clearly a major interest in ensuring accurate and consistent application of accounting standards in the securities markets they oversee. In the EU securities markets regulators must be actively involved in enforcement issues. In particular, the Commission looks to European securities markets supervisors (through FESCO - the Forum of European Securities Commissions) to develop and implement a common approach to enforcement. Such an approach would establish a level playing field and avoid the danger of regulatory arbitrage. Peer-reviews of securities markets supervisors' practices could be considered as a useful instrument for ensuring a common approach.

Implementation, timing and transition period

29. **Before the end of 2000**, the Commission will present proposals to introduce the requirement that all listed EU companies report in accordance with (endorsed) IAS and provide an option for Member States to allow (or require) unlisted companies to report in accordance with IAS. This proposal will also establish the basic rules of the endorsement mechanism, transitional modalities, the timetable for implementation, and a review clause to permit an assessment of the approach.

30. The Commission considers that in order to implement the IAS requirement within the 2005 deadline set by the Lisbon European Council for the completion of the Financial Services Action Plan, a transition period will be needed to allow the transposition of the legislation into national law and the adjustment of listed companies to the new set of rules. The Commission will limit the duration of that transition period, which will begin from the date of implementation of the initial legislative proposal so that, at the latest, from 2005 onwards all listed EU companies will be preparing IAS consolidated accounts. During the transition period, Member States will be entitled to decide what listed companies could (or should) use IAS in advance of the full implementation date. The Commission considers that five years after the adoption of the proposal, the provisions, procedures and mechanisms should be reviewed in the light of national, European and international experience. The Commission will benchmark progress.

31. Within the EU, some large companies apply US GAAP, often because they are listed on the US capital markets or because they operate in industries where the IASC has not yet provided an equivalent industry standard. Member States could permit the use of US GAAP during all or part of the transitional period.

32. The Commission will introduce proposals to modernize the EU Accounting Directives **before the end of 2001** which will continue to be the basis for financial reporting by all limited liability companies in the EU. Modernization of the Accounting Directives should reduce potential conflicts with IAS and bring the Directives into line with modern accounting developments. This is particularly true where new technological developments call for an adaptation of traditional accounting methods, such as the recognition and measurement of intangible assets. The Commission will seek advice through the relevant advisory committees on whether new communications and information technology, in particular the internet, will affect financial reporting and require legislative action.

Conclusion

The Lisbon European Council has requested that steps should be taken to enhance the comparability of companies financial

statements. This Commission Communication presents a new orientation to fulfil this objective. The Commission invites the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions to urgently endorse the approach outlined in this Communication.

Annexure 2**COMMISSION OF THE
EUROPEAN COMMUNITIES**

Brussels, 20.12.2000

Rev. 13

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL

on the application of international accounting standards

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**Proposal for a Regulation of the European
Parliament and of the Council
on the application of international accounting standards
Explanatory Memorandum****1. Introduction**

The 23-24 March 2000 Lisbon Council Conclusions stressed the need to accelerate completion of the internal market for financial services, set a deadline of 2005 to implement the Commission's Financial Services Action Plan and urged that steps be taken to enhance the comparability of financial statements prepared by listed¹ companies.

¹ For the purpose of this Regulation, the terminology "listed companies" shall be understood as referring to companies whose securities are admitted to trading on a regulated market, i.e. publicly traded companies. The expression "listed companies" is only used for ease of communication. By opposition, wherever the expression "unlisted companies" is used, this shall be understood in the acceptance of "non publicly traded companies".

On 13 June 2000, the Commission adopted its Communication *The EU's Financial Reporting Strategy: The Way Forward*². The Communication proposes that all EU companies listed on a regulated market should be required to prepare their consolidated accounts in accordance with a single set of accounting standards, namely International Accounting Standards (IAS) from 2005, at the latest. Adoption of uniform, high quality financial reporting rules in EU capital markets will enhance overall market efficiency, thereby reducing the cost of capital for companies.

On 17 July, the ECOFIN Council welcomed the June 2000 Communication and emphasised in its conclusions that the comparability of the financial statements of listed undertakings, financial institutions and insurance undertakings is an essential aspect of the integration of the financial markets. ECOFIN also invited the Commission to present a proposal to introduce the new requirement and to establish an appropriate mechanism for recognising IAS.

A recent survey³ of 700 EU listed companies reveals that 79% of Chief Financial Officers support the European Commission's recommendation that IAS should be mandatory for listed companies by 2005. Strategic business and financial considerations, ahead of accounting issues, are the most compelling reasons for considering the change to IAS. These include marketability, cross-border mergers and acquisitions, shareholder dialogue and finance raising.

EU accounting legislation, adopted in the 1970s, provided a base level for harmonisation, as regards reporting requirements for limited liability companies. However, it has not been able to deliver sufficient comparability for publicly traded companies. A new approach is necessary to meet the current needs of a fully integrated European capital and financial services market, which the Lisbon European Council aspired to. Furthermore, these companies are subject to more demanding disclosure requirements from investors and need a financial reporting system that offers a much higher level of transparency and comparability of company performance.

² COM (2000)359, 13.06.2000

³ PriceWaterhouseCoopers – International Accounting Standards in Europe – 2005 or now?

The lack of comparability in financial reporting has adverse effects for stake-holders. Adaptation of financial statements to take account of local conventions was understandable when investors and other stakeholders were of the same nationality as the company. However, with the emergence of an integrated financial market, the securities of any one company are often held by an internationally diverse group of investors. The prevailing level of diversity is also detrimental to the effective supervision and efficient enforcement of financial reporting requirements of publicly traded companies.

In an integrated European securities market, it is necessary that listed companies publish their financial statements on the basis of a single set of financial reporting standards. Rather than relying on market forces to determine the standards that should be used, the most effective basis for ensuring this objective of comparability is a requirement for listed companies to publish financial statements that conform to a single set of standards. The EU itself will not attempt to produce a distinct body of accounting standards. This would miss the trend towards globalisation of financial markets and weaken the ability to raise capital by EU companies on third country markets. Therefore, an internationally recognised set of standards appears to be the most suitable basis for financial reporting in the EU.

In its 1995 Accounting Strategy Communication, the Commission expressed its preference for IAS as the set of standards for EU companies wishing to raise capital on an international basis. Since 1996 the IASC (International Accounting Standards Committee) has undertaken a gradual and in-depth process of revision and development of the standards. Also, in 1999 the IASC finalised the core set of standards agreed with International Organisation of Securities Commissions (IOSCO). IAS provides a comprehensive and conceptually robust set of standards for financial reporting specifically intended to serve the needs of the international business community.

2. An Internal Market Approach

This new approach is to deliver the European Union's political objective of cementing the conditions necessary for the realisation

of an integrated, efficient capital market. Continuing to rely on establishing *minimum, equivalent* requirements concerning the extent of the financial information to be made available by publicly traded companies is no longer sufficient. In order to build a fully integrated capital market by 2005 at the latest, the Community must now adopt measures that bring about *a much higher level of comparability* of financial accounts throughout the Internal Market. This will improve competition and greatly facilitate the free movement of capital as an essential, key parts for completing EU's capital markets..

A Regulation is necessary to ensure that by 2005 all listed EU companies apply International Accounting Standards. It will also ensure early take-up and provide the right signals to the markets. By complying with IAS, the quality of financial statements will be dramatically improved and there will be an increasing degree of comparability. The credibility and consequently the usefulness of financial statements will be enhanced throughout the EU capital markets. Investors must be able to compare the financial statements of an enterprise through time in order to identify trends in its financial position and performance and also be able to compare the financial statements of different enterprises in order to evaluate their relative financial position and performance.

In order to achieve full legal certainty and consistent application of IAS by all listed EU companies, it is necessary to reduce the risk of national variations that do not correspond with today's needs of financial markets and which could hinder establishing a single set of accounting standards in EU capital markets. The approach proposed is also necessary in order to avoid uneven implementation and undue delays in transposition of the new requirements into national law.

3. Main Issues Considered in this Proposal

This proposal introduces the requirement that, at the latest from 2005 onwards, all EU companies listed in a regulated market as well as companies preparing admission to trading prepare their consolidated financial statements in accordance with IAS adopted for application within the EU. It also provides an option for Member

States to permit or require the application of adopted IAS in the preparation of annual accounts and to permit or require the application of adopted IAS by unlisted companies. This means that Member States can require uniform application of adopted IAS to important sectors such as banking or insurance, regardless of whether companies are listed or not. This proposal also establishes the basic rules for the creation of an endorsement mechanism that will adopt IAS, the timetable for implementation and a review clause to permit an assessment of the overall approach proposed.

3.1. Timing and date of application

It is extremely important to facilitate early application of the proposed legislation in order to meet the 2005 deadline set out by the Lisbon Council. It is also crucial for the objective of comparability to achieve consistent application of IAS by all listed EU companies, with no national variations. This is indispensable for the efficient functioning of the markets. The proposed Regulation will enter into force immediately in order to foster application of IAS by listed companies as soon as possible. However, as provided in the June Communication, a later date of application (before obligatory application in 2005) is necessary in order to allow Member States and companies to carry out the necessary adaptations to make the application of international accounting standards possible. During this transitional period Member States may however anticipate the requirement or permit the use of adopted IAS for all or certain companies within the scope of the proposal. Member States are also free to apply or to adopt any measures which do not conflict with the scope or objectives of the proposed Regulation and that ensure its application.

3.2. Role of the Accounting Directives

The requirement for listed companies to apply IAS will be additional to the Directives' requirements. The Directives will remain applicable to maintain a base level of comparability for all limited liability companies across the EU. This will also help unlisted companies that do not use IAS to be encouraged to move from the minimum requirements of the Accounting Directives to more sophisticated

financial reporting such as IAS. Conformity with the Directives will be required for all companies, the application of IAS will be a supplementary requirement for listed companies.

3.3. Endorsement mechanism

In order to provide for the necessary public oversight, an EU endorsement mechanism is needed. The role of that mechanism is not to reformulate or replace IAS, but to oversee the adoption of new standards and interpretations, intervening only when these contain material deficiencies or have failed to cater for features specific to the EU economic or legal environment. The central task of this mechanism should be to confirm that IAS provide a suitable basis for financial reporting by listed EU companies. The mechanism will be based on a two-tier structure, combining a regulatory level with an expert level.

Regulatory level of the endorsement mechanism

The regulatory level will include representatives of all Member States and operate on the basis of appropriate institutional arrangements under established comitology rules that will ensure full transparency and accountability towards the Council and the Parliament. The regulatory level will give its opinion as to whether or not an IAS standard shall be adopted by the EU and by which date adopted IAS apply within the EU.

Expert level of the endorsement mechanism

An accounting technical committee will provide the support and expertise needed to assess the standards on a timely basis. It will also provide input into the IASC standard setting process at all stages, and particularly in the early phases. The expert level must be able to issue final opinions expeditiously. EU users of IAS and the markets in general, need to be certain about the standards to be used. Timely decision-making can only be ensured if the mechanism can anticipate potential problems concerning forthcoming IAS. This means that the mechanism needs to follow, proactively and continuously, the IASC standard setting process.

The expert level of the endorsement mechanism will ensure that EU users and preparers are involved in the preparatory discussions of the standards at international level and in the technical assessment of the standards before their EU adoption. This requires the involvement of standard setters, the accounting profession, users and preparers as well as a close co-operation with supervisory and prudential authorities. The endorsement mechanism will facilitate the application of IAS in the EU environment. The Accounting Technical Committee will also advise the Commission on whether or not an amendment to the Directives is recommended in the light of international accounting developments.

4. Outline of the Contents of this Proposal

4.1. Article 3 – Powers of the Commission and publicity

Paragraph 1 of this Article defines the powers conferred on the Commission for the adoption of international accounting standards in the Community.

Paragraph 2 foresees that two years after entry into force of the proposal at the latest, the Commission assisted by the Accounting Regulatory Committee will, in accordance with the procedure laid down in Article 6, decide on the adoption and applicability of the international accounting standards listed in the Annex to the proposed legislation.

Paragraph 3 refers to the necessary legal publicity that would follow adoption of a standard. This will require publication in the Official Journal (title and reference number of the standard and its effective date).

4.2. Articles 4 to 5 – Requirements applying to EU companies

All EU companies traded on a regulated market⁴ as well as all

⁴ Within the meaning of Article 1(13) of Council Directive of 10 May 1993 (93/22/EEC OJ L 141 11.06.93 P.27) on investment services in the securities field

companies preparing a public offer prospectus⁵ in accordance with the Listing Particulars Directive⁶ in view of their admission to trading on a regulated market shall be required to prepare consolidated accounts in accordance with IAS, at the latest from 2005 onwards. Member States will be permitted either to require or to allow non-traded companies to publish financial statements in accordance with the same set of standards as those for publicly traded companies. The requirement to use IAS relates to the consolidated accounts of publicly traded companies. Member States will be able to permit or require the use of IAS for individual accounts.

4.3. Article 6 – The Accounting Regulatory Committee

The endorsement mechanism's central regulatory function will be to assess IAS in order to confirm that they represent a suitable basis for financial reporting by listed EU companies. The Accounting Regulatory Committee corresponds to the regulatory level of the endorsement mechanism and will deliver its opinion upon the proposal of the Commission as to the standards and interpretations to be used (adopting or, conversely, rejecting a standard for application in the EU) and their date of application in the Community.

The specific, regulatory characteristics of these functions could imply that the composition of the Accounting Regulatory Committee may well be different from that of the Contact Committee set up pursuant to Article 52 of Directive 78/660/EEC, whose function is strictly of an advisory nature. Moreover, the powers of the Contact Committee also include statutory audit. It is therefore appropriate to create a new committee distinct from the Contact Committee, with the powers indicated in this Regulation.

The Accounting Regulatory Committee's procedure will follow existing comitology rules. It will be a committee composed of

5 Regulated by Council Directive of 17 April 1989 (89/298/EEC OJ L 124 05.05.89 P.8) coordinating the requirements of the drawing-up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public.

6 Council Directive of 17 March 1980 (80/390/EEC OJ L 100 17.04.80 P.1) coordinating the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock exchange listing.

representatives of the Member States and chaired by the Commission. The Commission will provide the secretariat. Under such arrangements, the Commission will present to the Committee a report, which will identify the standard, examine its conformity with the Accounting Directives and its suitability as a basis for financial reporting in the EU. Within one month, the Committee must decide (on the basis of qualified majority voting) upon the proposal made by the Commission. This procedure will also apply for the adoption of amendments to previously adopted IAS. In accordance with the internal rules of procedure for the Accounting Regulatory Committee, the Commission may decide to invite experts to talk on particular matters, at the request of a Committee member or on its own initiative.

In preparing its report, the Commission may ask an accounting technical committee for advice. If this committee were to recommend the adoption of a standard, but the Commission did not agree with this recommendation, the Commission will substantiate its view and then ask the technical level to examine an alternative solution.

4.4. Articles 7 to 10 – Final Provisions

Article 7 requires Member States to inform the Commission and other Member States in case where they exercise any of the options included in the proposal. Article 8, for accountability purposes, requires the Commission to inform the Council and the European Parliament about the measures adopted pursuant to this Regulation. Also, as provided in the June 2000 Communication, this article establishes that the provisions, mechanisms and procedures laid down in the proposal will need to be reviewed subsequent to final implementation. This is foreseen by mid 2007.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL**

on the application of international accounting standards

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,
and in particular Article 95(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Acting in accordance with the procedure laid down in Article 251 of
the Treaty,

Whereas:

1. The Lisbon European Council of 23-24th March 2000 emphasised the need to accelerate completion of the internal market for financial services, set the deadline of 2005 to implement the Commission's Financial Services Action Plan and urged that steps be taken to enhance the comparability of financial statements prepared by publicly traded companies.
2. In order to contribute to a better functioning of the internal market, publicly traded companies must be required to apply a single set of high quality international accounting rules for the preparation of their consolidated financial statements. Such measure will also ensure high level transparency and comparability of financial reporting by all publicly traded EU companies as a necessary condition for building an integrated capital market which plays its role effectively, smoothly and efficiently.

3. This Regulation aims at contributing to the efficient and cost-effective functioning of the capital market. The protection of investors and the maintenance of confidence in the financial markets is also an important aspect of the completion of the internal market in this area. This Regulation reinforces the freedom of movement of capital in the internal market and helps enabling European companies to compete on an equal footing for financial resources available in the European capital markets, as well as in world capital markets.
4. It is important for the competitiveness of European capital markets to achieve convergence of the norms used in Europe for preparing financial statements, with international accounting standards that can be used globally, for cross-border transactions or listing anywhere in the world.
5. On 13 June 2000, the Commission published its Communication on "EU Financial Reporting Strategy: the way forward" in which it was proposed that all publicly traded EU companies prepare their consolidated financial statements in accordance with one single set of accounting standards, namely International Accounting Standards (IAS), at the latest by 2005.
6. International Accounting Standards (IASs) are developed by the International Accounting Standards Committee (IASC), whose purpose is to develop a single set of global accounting standards. These standards should, wherever possible and provided that they ensure a high degree of transparency and comparability for financial reporting in the Community, be made obligatory for use by all publicly traded EU companies as well as by all EU companies preparing admission to trading of securities.
7. The Commission, assisted by an Accounting Regulatory Committee composed of representatives of the Member States, should be authorised, in accordance with the procedure laid down in the Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, to make international accounting standards mandatory at

Community level. Since the measures necessary for the implementation of this Regulation are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision.

8. An accounting technical committee will provide support and expertise to the Commission in the assessment of international accounting standards. It will also contribute to the strengthening of the co-ordination of positions within the European Union in the International Accounting Standards Committee's (IASC) discussions, the definition at an early stage of European positions on new international accounting issues and active European participation in the constituent bodies of the IASC in order to influence and shape the solutions eventually chosen by the IASC.
9. The endorsement mechanism should act expeditiously on proposed international accounting standards and also be a means to deliberate, reflect and exchange information on international accounting standards among the main parties concerned, in particular national accounting standard setters, securities supervisors, the accounting profession and users and preparers of accounts. The mechanism should be a means to foster common understanding of adopted international accounting standards in the European Union.
10. In accordance with the principle of proportionality, the measures provided for in this Regulation, in requiring the application of a single set of international accounting rules to publicly traded companies and companies preparing admission to trading, are necessary to achieve the objective of contributing to the efficient and cost-effective functioning of EU capital markets and thereby to the completion of the internal market.

In accordance with the principle of proportionality, it is necessary, as regards annual accounts, to leave to Member States the option to permit or require publicly traded companies as well as companies preparing admission to

trading to prepare them in conformity with international accounting standards adopted in accordance with the procedure laid down in this Regulation. Member States may decide as well to extend this permission or this requirement to non-traded companies as regards the preparation of their consolidated accounts and/or their annual accounts.

11. In order to allow Member States and companies to carry out the necessary adaptations to make the application of international accounting standards possible, it is necessary to foresee the application of certain provisions only in 2005.

HAVE ADOPTED THIS REGULATION:

Article 1 - Aim

This Regulation lays down the rules for the adoption and use of international accounting standards in the Community in order to improve the functioning of the Internal Market and to ensure a smooth and efficient functioning of the EU capital market.

Article 2 - Definitions

For the purpose of this Regulation, "international accounting standards" shall mean International Accounting Standards (IAS) and related Interpretations (SIC interpretations) issued by the International Accounting Standards Committee (IASC) listed in the Annex to this Regulation, subsequent amendments to those standards and related interpretations, future standards and related interpretations to be produced by the IASC as well as equivalent accounting standards, which are standards that ensure a high degree of transparency and comparability of financial reporting and are as close as possible to International Accounting Standards.

Article 3 – Powers of the Commission and publicity

1. The Commission shall, in accordance with the procedure laid down in Article 6, identify and adopt the international accounting standards that shall be made mandatory in accordance with Article 4 of this Regulation in order to ensure

a high degree of transparency and comparability of financial statements.

2. At the latest by 31 December 2002, the Commission shall, in accordance with the procedure laid down in Article 6, decide on the applicability within the Community of the international accounting standards listed in the Annex to this Regulation.
3. The decisions of the Commission concerning the adoption of international accounting standards shall be published in the Official Journal of the European Communities.

Article 4 – Consolidated accounts of publicly traded companies and of companies preparing admission to trading of securities

Companies governed by the law of a Member State, whose securities are admitted to trading on a regulated market within the meaning of Article 1(13) of Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field, or whose securities are offered to the public in view of their admission to trading on a regulated market in accordance with the conditions established in Council Directive 80/390/EEC of 17 March 1980 coordinating the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock exchange listing, shall prepare their consolidated accounts over the financial year starting on or after 1 January 2005 in conformity with the international accounting standards adopted in accordance with the procedure laid down in this Regulation.

Article 5 – Options in respect of annual accounts and of non publicly-traded companies

Member States may permit or require

- a) the companies referred to in Article 4 to prepare their annual accounts,

- b) companies other than those referred to in Article 4 to prepare their consolidated accounts and/or their annual accounts,

in conformity with the international accounting standards adopted in accordance with the procedure laid down in Article 6.

Article 6 – The Accounting Regulatory Committee

1. In adopting international accounting standards in accordance with the procedure laid down in this Regulation, the Commission shall be assisted by an Accounting Regulatory Committee hereinafter referred to as “the Accounting Regulatory Committee”, composed of representatives of the Member States and chaired by the representative of the Commission. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC thereof shall apply, in compliance with Article 7 (3) and Article 8 thereof.
2. The Accounting Regulatory Committee shall deliver its opinion on the Commission’s proposal within one month after its submission.
3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be two months.

Article 7 - Notification

Where Member States take measures by virtue of Article 5, they shall immediately communicate these to the Commission and to other Member States.

Article 8 – Information and Review

The Commission shall review the operation of this Regulation and report thereon to the European Parliament and to the Council by 1 July 2007 at the latest.

Article 9 - Entry into force

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 10 - Addressees

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament
The President*

*For the Council
The President*

Annexure**INTERNATIONAL ACCOUNTING STANDARDS**

<i>IAS No.</i>	<i>Title</i>
IAS 1	Presentation of Financial Statements
IAS 2	Inventories
IAS 7	Cash Flow Statements
IAS 8	Profit or Loss for the Period, Fundamental Errors and Changes in Accounting Policies
IAS 10	Events After the Balance Sheet Date
IAS 11	Construction Contracts
IAS 12	Income Taxes
IAS 14	Segment Reporting
IAS 15	Information Reflecting the Effects of Changing Prices
IAS 16	Property, Plant and Equipment
IAS 17	Leases
IAS 18	Revenue
IAS 19	Employee Benefits
IAS 20	Accounting for Government Grants and Disclosure of Government Assistance
IAS 21	The Effects of Changes in Foreign Exchange Rates
IAS 22	Business Combinations
IAS 23	Borrowing Costs

IAS 24	Related Party Disclosures
IAS 26	Accounting and Reporting by Retirement Benefit Plans
IAS 27	Consolidated Financial Statements and Accounting for Investments in Subsidiaries
IAS 28	Accounting for Investments in Associates
IAS 29	Financial Reporting in Hyperinflationary Economies
IAS 30	Disclosures in the Financial Statements of Banks and Similar Financial Institutions
IAS 31	Financial Reporting of Investments In Joint Ventures
IAS 32	Financial Instruments: Disclosures and Presentation
IAS 33	Earnings Per Share
IAS 34	Interim Financial Reporting
IAS 35	Discontinuing Operations
IAS 36	Impairment of Assets
IAS 37	Provisions, Contingent Liabilities and Contingent Assets
IAS 38	Intangible Assets
IAS 39	Financial Instruments: Recognition and Measurement
IAS 40	Investment Property

Discontinuity in the numbering of IAS is due to the fact that some of the first standards have been superseded by more recent ones.

STANDING INTERPRETATIONS COMMITTEE RULINGS

<i>SIC no.</i>	<i>Title</i>
SIC-1	Consistency – Different Cost Formulas for Inventories
SIC-2	Consistency – Capitalisation of Borrowing Costs
SIC-3	Elimination of Unrealised Profits and Losses on Transactions with Associates
SIC-5	Classification of Financial Instruments - Contingent Settlement Provisions
SIC-6	Costs of Modifying Existing Software
SIC-7	Introduction of the Euro
SIC-8	First-Time Application of IASs as Primary Basis of Accounting
SIC-9	Business Combinations - Classification either as Acquisitions or Unitings of Interests
SIC-10	Government Assistance - No Specific Relation to Operating Activities
SIC-11	Foreign Exchange - Capitalisation of Losses Resulting from Severe Currency Devaluations
SIC-12	Consolidation - Special Purpose Entities
SIC-13	Jointly Controlled Entities - Non-Monetary Contributions by Venturers
SIC-14	Property, Plant and Equipment - Compensation for the Impairment or Loss of Items
SIC-15	Operating Leases - Incentives
SIC-16	Share Capital - Reacquired Own Equity Instruments (Treasury Shares)

SIC-17	Equity - Costs of an Equity Transaction
SIC-18	Consistency – Alternative Methods
SIC-19	Reporting Currency – Measurement and Presentation of Financial Statements under IAS 21 and IAS 29
SIC-20	Equity Accounting Method - Recognition of Losses
SIC-21	Income Taxes - Recovery of Revalued Non-Depreciable Assets
SIC-22	Business Combinations – Subsequent Adjustment of Fair Values and Goodwill Initially Reported
SIC-23	Property, Plant and Equipment - Major Inspection or Overhaul Costs
SIC-24	Earnings Per Share – Financial Instruments and Other contracts that May be Settled in Shares
SIC-25	Income Taxes - Changes in the Tax Status of an Enterprise or its Shareholders

FINANCIAL STATEMENT

1. TITLE OF OPERATION

Proposal for a Regulation of the European Parliament and of the Council on the application of international accounting standards

2. BUDGET HEADING INVOLVED

None

3. LEGAL BASIS

Article 95 (1) of the EC Treaty

4. DESCRIPTION OF OPERATION

4.1 General objective

To achieve clear pan-European rules for comparable, transparent financial reporting throughout the European Union.

4.2 Period covered and arrangements for renewal

The Accounting Regulatory Committee foreseen in Article 6 of the proposed regulation will start meeting soon after adoption of the regulation (end 2001). This Committee is an executive committee ruled by Council decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

5. CLASSIFICATION OF EXPENDITURE

N/A

6. TYPE OF EXPENDITURE

N/A

7. FINANCIAL IMPACT ON **PART B** OF THE BUDGET

No impact.

8. FRAUD PREVENTION MEASURES

Given the nature of the action, no specific fraud prevention measures are necessary.

9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

9.1 Specific and quantified objectives; target population

The thrust of the proposal is to achieve clear pan-European rules for comparable, transparent financial reporting throughout the European Union. Rules which should be capable of rigorous interpretation and application, thereby providing relevant and reliable information for investors and other stakeholders so that they can make meaningful comparisons of company performance, cross-border and cross-sector. Comparable, transparent financial reporting is an essential building block for the realisation of integrated, competitive and attractive EU capital markets to complement the single currency and so strengthen the European economy.

This proposal is a priority measure under the Financial Services Action Plan, endorsed by the Lisbon European Council as a key element of the creation of an integrated financial services market.

9.2 Grounds for the operation

The initiative concerns the operation of the internal market and hence comes under the exclusive competence of the Community; thus, the principle of subsidiarity does not apply to this specific situation.

The present proposal allows Member States to permit or require the application of the same accounting standards required for publicly traded companies to non-traded companies and for producing individual accounts. Moreover, the proposal establishes the creation of an EU mechanism that will assess International Accounting Standards and give them legal endorsement for use within the EU.

The establishment of an endorsement mechanism based at the political level on comitology rules will guarantee the swift adoption at Community level of international accounting standards issued by the International Accounting Standards Committee (IASC). The frequency of meeting of the Accounting Regulatory Committee will be partly determined by the work of the IASC. In this context, it is expected that the Accounting Regulatory Committee will have to meet practically once a month. These meetings will be held in Brussels.

9.3 Monitoring and evaluation of the operation

An evaluation of the action will be made in 2007, based on a report prepared by the Commission on the application of the regulation.

10. ADMINISTRATIVE EXPENDITURE (SECTION III, PART A OF THE BUDGET)

Actual mobilisation of the necessary human and administrative resources will be covered within the budgetary allocation attributed to the managing DG.

10.1 Effect on the number of posts

Type of post		Staff to be assigned to managing the operation		Source		Duration
		Permanent posts	Temporary posts	Existing resources in the DG or department concerned	Additional resources	
Officials or temporary staff	A	1.5		1.5	0	
	B	.		.		
	C	0.5		0.5		
Other re-sources						
Total		2.0		2.0	0	

This action will be managed using existing staff resources of the unit concerned.

10.2 Overall financial impact of additional human resources

Euro

	Amounts (Euro)	Method of calculation
Officials	€ 216,000	€ 108,000x2
Other resources		
Total	€ 216,000	

10.3 Increase in other administrative expenditure as a result of the operation

Euro

Budget heading	Amounts (Euro)	Method of calculation
Meetings (A 7031)	€ 97,500 15	Member States representatives meeting 10 times a year: € 650x15x10 meetings = € 97,500
Comitology committee		
Total	€ 97,500	This will only apply from 2002 onwards

IMPACT ASSESSMENT FORM**THE IMPACT OF THE PROPOSAL ON BUSINESS WITH
SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED
ENTERPRISES (SMEs)****I. TITLE OF PROPOSAL**

Proposal for a Regulation on the application of international accounting standards

II. DOCUMENT REFERENCE NUMBER**III. THE PROPOSAL**

1. The initiative concerns the operation of the internal market and hence comes under the exclusive competence of the Community; thus, the principle of subsidiarity does not apply to this specific situation.

This legislative proposal is a crucial element in delivering the Commission's Action Plan for Financial Services. Adoption of uniform, high quality financial reporting rules in EU capital markets will greatly enhance the comparability and transparency of financial information, thereby increasing the efficiency of the markets and reducing the cost of capital for companies. The realisation of this objective is a necessary condition to make progress in other key areas in financial services.

The present proposal allows Member States to permit or require the application of the same accounting standards required for publicly traded companies to non-traded companies and for producing individual accounts. Moreover, the proposal establishes the creation of an EU mechanism that will assess International Accounting Standards and give them legal endorsement for use within the EU. This mechanism will comprise a two-tier structure: A Regulatory committee ("The Accounting Regulatory Committee") that will operate under established comitology rules; and a committee of technical experts.

The thrust of the proposal is to achieve clear pan-European rules for comparable, transparent financial reporting throughout the European Union. Rules which should be capable of rigorous interpretation and application, thereby providing relevant and reliable information for investors and other stakeholders so that they can make meaningful comparisons of company performance, cross-border and cross-sector. Comparable, transparent financial reporting is an essential building block for the realisation of integrated, competitive and attractive EU capital markets to complement the single currency and so strengthen the European economy.

IV. THE IMPACT ON BUSINESS

2. Who will be affected by the proposal?

All EU companies traded in a EU regulated market as well as all EU companies preparing a listing on such a market will be required to prepare, at the latest by 2005, their consolidated accounts in accordance with adopted international accounting standards. Member States will have the faculty to extend this requirement to non-traded companies and for producing individual accounts.

There are at present around 7000 companies listed on EU regulated markets, 275 of which already apply IAS.

3. What will business have to do to comply with the proposal?

To meet in practice the requirements of the proposal, companies concerned will have to start either preparing consolidated financial statements or retreating them according to adopted IAS already in 2003 and 2004 so as to be in a position in 2005 to present IAS compliant consolidated financial statements for that financial year as well as for the two previous financial years to meet the comparability requirement imposed both by the Accounting Directives and IAS norms.

It is expected that this proposal should be adopted by Council and Parliament at the latest in 2002. This will provide the

accounting profession as well as companies with the necessary transition period to prepare themselves before 2005.

Costs for companies will mainly be costs of training, as their accountants will need to familiarise themselves with a sophisticated set of accounting rules. The same applies to the accounting profession.

4. What economic effects is the proposal likely to have?

Adoption of uniform, high quality financial reporting rules in EU capital markets will greatly enhance the comparability and transparency of financial information, thereby increasing the efficiency of the markets and reducing the cost of capital for companies.

5. The proposal contains measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements etc)?

The vast majority of small and medium-sized companies will not be concerned by this proposal, to the extent that its main requirement relates essentially to the application of adopted IAS for the preparation of consolidated financial statements, with which very few SMEs are concerned.

Although the proposal allows Member States to extend this requirement to the producing of annual accounts and/or consolidated accounts by non-traded companies, it is very unlikely, for obvious reasons of proportionality, that it will apply to SMEs. Member States may however permit SMEs to use adopted IAS if they so wish for the preparation of their financial statements.

V. CONSULTATION

6. FEE (accounting profession); UNICE/ERT (industry), FESE (stock exchanges), EFFAS (financial analysts), CEA (insurance), UEAPME (small and medium-sized enterprises)

have all responded positively to the proposal and are considering taking part to the foundation of a private organisation that will provide support to an expert committee on accounting, the Accounting Technical Committee.

Annexure 3

EXPERT LEVEL OF THE ENDORSEMENT MECHANISM – THE ESTABLISHMENT OF THE “EUROPEAN FINANCIAL REPORTING ADVISORY GROUP” (EFRAG)

Final Text

31 March 2001

Introduction and Background

On 31 July FEE accepted the Commission invitation to contribute to the development of the technical level of the endorsement mechanism in exploring ways and means to bring about the coordination of the accounting profession, users and preparers in the EU as well as accounting standard setters. In the Annex to the invitation the Commission provided a tentative outline of the organisation of the EU endorsement mechanism, covering both political and technical level. FEE agreed to organise the dialogue with the aim to produce joint proposals which have the support of all key interested parties.

The main objective is to organise a coordination of views in Europe across borders to obtain true harmonisation and to enable companies to prepare one single set of financial statements (at least for their consolidated accounts).

All organisations involved in these proposals understand and support the need to accelerate the completion of the Internal Market for Financial Services as identified by the Lisbon European Council. Among the priority objectives mentioned is the need to enhance the comparability of companies' financial statements to benefit companies and investors. They equally support the policy to ensure that securities can be traded on EU and international financial markets on the basis of a single set of financial reporting standards.

These proposals are not intended to create an extra level of standard setting: the proposed structure is not a European standard

setter but is needed to establish proper European influence within IASC.

The European organisations involved have reviewed the proposal for a Regulation on the application of international accounting standards implementing the Communication of 13 June and establishing the political level (regulatory level), the Accounting Regulatory Committee and welcome the text of the proposal. The technical (expert) level is not mentioned in the articles as such, but a maximum recognition is given to EFRAG in the preamble 8, the explanatory remarks as well as in the press release and frequently asked questions.

These joint proposals are fully supported by UNICE (Union des Confédérations de l'Industrie et des Employeurs d'Europe), FEE (Fédération des Experts Comptables Européens), EBF (European Banking Federation), ESBG (European Savings Banks Group), GEBC (European Association of Cooperative Banks), CEA (Comité Européen des Assurances), EFFAS (European Federation of Financial Analysts Societies), FESE (Federation of European Securities Exchanges), UEAPME (European Association of Craft, Small and Medium-sized Enterprises) and EFAA (European Federation of Accountants and Auditors for SMEs).

Function and Tasks

1. For the last two years FEE has stimulated the debate on a financial reporting strategy in Europe. After publishing its Discussion Paper in October 1999, debate and discussions have continued both within FEE and with other interested parties in Europe. During this period the thinking on financial reporting has developed and changed.
2. The Commission Communication of 13 June 2000, based on a requirement for listed EU companies to use IAS in their consolidated accounts from at latest the financial year 2005 onwards, proposed the introduction of a two-level endorsement mechanism. The endorsement mechanism is intended to give IAS the necessary legal backing. Following the political support of the ECOFIN Council of Ministers in July, it is clear that the EU endorsement mechanism will be

introduced to provide public oversight, to oversee the adoption of new standards and interpretations. The endorsement mechanism is expected to operate on the basis of monitored self-regulation and to have a two-tier structure – a political (regulatory) level and a technical (expert) level organised by the private sector. This is confirmed by the proposal for a Regulation on the application of international accounting standards as published on 13 February 2001.

3. There is a general agreement that, in order to ensure that issues identified in Europe are fully understood and properly debated in the IASB, Europe needs to coordinate its views and share its resources, so as to provide input to IASB at an early stage. All organisations involved in these proposals have always stressed the risks of having standards in Europe other than global standards. There is also a view that Europe can only support IAS if it has sufficient input and influence in the development of IAS. A separate standard setter at European level should not be created.
4. Until now, four broad functions for the technical level have been discussed:
 - Proactive contribution to the work of IASC: Proactive coordination of European standard setters, accounting profession, users and preparers so as to contribute to and influence the IASB standard setting process efficiently. The mechanism should normally provide the IASB with submissions on any discussion paper or exposure draft issued by the IASB or SIC (Standing Interpretations Committee). It would also contribute to the development of technical and conceptual papers on emerging topics that would be brought to the attention of the IASB.
 - Initiating changes to the EU Accounting Directives: To help the Commission in their assessment of possible non-conformity of an IAS or SIC with EU Accounting Directives and recommending appropriate changes to the Directives.

- Technical assessment of the IASB standards and interpretations: Confirming or conversely rejecting a standard or interpretation for application in the EU.
- Implementation guidance: Identification of issues for which the IASB general interpretation guidance (i.e. SIC Interpretations) is not sufficient to ensure consistent application of a given standard in the EU. The mechanism would communicate such situations to the IASB and urge it to identify appropriate solutions. Also, in cooperation with European securities markets supervisors, the mechanism would develop implementation guidance specifically relevant to EU listed companies.

The specific endorsement function consists of the technical assessment of IAS, the other overall functions form part of the pro-active role.

The technical level has been given the working name “the European Financial Reporting Advisory Group” (EFRAG) for the purpose of this paper.

Pro-active contribution to the work of IASB

5. In order to influence the work of IASB the EFRAG should contribute to all phases of the IASB standard setting process, but in particular at an early stage, which would include the following tasks:
 - commenting on IASB consultative papers, exposure drafts, draft SIC interpretations, draft implementation guidance, etc.
 - early identification of potential incompatibilities with EU Accounting Directives
 - consultation and collection of views of interested parties in Europe (normally through standard setting bodies and other relevant organisations involved)

Study on manner of IFRS Implementation in EU...

- encourage IASB to place topics of specific interest to Europe on its work programme and to influence the direction which the work would take
 - coordination of work programme of European standard setters in light of IASB work programme
 - providing input to IASC Standards Advisory Council
 - liaison with IASB
 - liaison with IASC Standards Advisory Council (seat on IASC Standards Advisory Council)
 - development of technical and conceptual papers (in the second stage)
6. If Europe wants to have a real influence within IASB, it should produce technical and conceptual papers on emerging topics in a similar way as G4+1 is doing today. This would in the longer run be the only way to ensure that specific European topics are included in the IASB agenda. Furthermore to attract high level experts as members of the Technical Expert Group, it is necessary to offer them not only reactive work, but also ambitious creative work. This may however be a task that should not directly be taken up by the EFRAG from the beginning but only when the other tasks are well established and the necessary experience is built up. This part of the pro-active role should be seen as an evolutionary process and might be considered as secondary in the beginning. If a certain project would not be of interest to the IASB or has no priority within IASB, EFRAG might consider to develop European guidance on the subject. However, it should be avoided that European mandatory standards are issued and that EFRAG becomes effectively a standard setter.
7. In commenting on various IASB consultative papers, EFRAG would be encouraged to reach a consensus view. It is unlikely that in practice always a consensus of views can be achieved. In the absence of a consensus view also the minority views should be made public.

8. The Accounting Regulatory Committee would not be involved in the pro-active role in that submissions to the IASB would not require endorsement of the political (regulatory) level. The Accounting Regulatory Committee of the endorsement mechanism would be kept informed of the pro-active contributions to IASB.
9. As part of the pro-active role liaisons related to enforcement (see also under Enforcement) should include:
 - liaising with any mechanism for pursuing complaints against companies or auditors about compliance with IAS
 - liaising with those bodies in Europe responsible for enforcement issues, including FESCO.

Initiating changes to the EU Accounting Directives

10. In its Communication and in the Explanatory Memorandum in the proposal for a Regulation, the Commission stated that the Accounting Directives would continue to apply to listed companies preparing their accounts on the basis of IAS. At the same time the Commission has started a review of the Accounting Directives, to modernise the Directives and to remove incompatibilities with (forthcoming) IAS. A separate amendment of the Fourth and Seventh Directives to introduce fair value accounting for certain financial instruments is in the first reading of the European Parliament and the Council of Ministers and shows how cumbersome an amendment of the Directives can be. EFRAG would advise the Commission on any future changes to the Directives, as long as the Directives also remain applicable to listed companies since the Directives should not be a barrier to the use of IAS. Moreover, non-listed companies under a Member State's option, will also be allowed to apply IAS. EFRAG should also be consulted on the forthcoming modernisation of the Accounting Directives.

The Directives should not form an obstacle to application of IAS in Europe. Rapid changes to the Directives may need to be accommodated.

EFRAG would have to set priorities, and would, at least in the beginning, have to concentrate on the consolidated accounts of listed companies.

Technical assessment of the IASC Standards and Interpretations

11. The technical assessment is basically the endorsement function. The objective is to provide the necessary legal certainty and to ensure the respect of EU rules and procedures as well as consideration of EU public policy concerns. Rejection of IAS should be exceptional and should be contemplated only as a last resort. In case of incompatibility between the Accounting Directives and an IAS or SIC interpretation, this should be noted during the development process of the standard or interpretation and an advice should be given to amend the Directives, so that it would not have to lead to a rejection of the IAS or SIC interpretation.
12. The technical assessment should consider whether there are any significant reasons to reject standards or interpretations. Acceptance/endorsement of parts of standards or interpretations should not be possible. The only other form of advice permitted should be to accept a standard on the basis that the SIC should consider issuing an interpretation to deal with a unique European circumstance. The advice, resulting from the technical assessment, as to whether there are grounds to reject an IAS (positive or negative advice) is directly submitted by the Technical Expert Group via the Commission to the Accounting Regulatory Committee.

In case an IAS is advised to be rejected, EFRAG should publish a full explanation for the rejection.

13. Given the importance of the consequences of negative advice, there need to be clear voting rules. Voting rules should be based on qualified majority to be refined when the actual size of the Technical Expert Group and the structure of EFRAG have been decided. The voting rules will be detailed in the internal rules/statutes. For a negative (non-

endorsement) advice, a larger majority could be required. Any abstention would be counted as a positive vote. For any advice, dissenting opinions should be disclosed upon request.

14. As part of the technical assessment, coordination and liaison would need to take place with the enforcement function on endorsed IAS.
15. The endorsement mechanism needs to act quickly so that European companies do not find themselves in a situation of uncertainty as to the applicability/acceptability of an IAS for which the implementation date has passed, because the formal pronouncement from the endorsement mechanism is outstanding. Therefore, a fixed timeframe following publication of an IAS needs to be established to carry out the assessment of a standard by EFRAG and put forward via the Commission to the Accounting Regulatory Committee. EFRAG has proactively consulted interested parties in Europe throughout the development of each IAS or interpretation and should therefore not need to consult widely in the technical assessment stage.
16. Rapid action at both the technical (expert) level and the political (regulatory) level is required once an IAS or SIC interpretation is published. The timetable of both levels should be coordinated with the IASB work. Both levels need to react within a short time scale. EFRAG should react within one month after a SIC Interpretation is published and within two months after an IAS is published, under the assumption that the publication is announced in advance.
17. The technical assessment would have to respect the provisions of the Framework for the Preparation and Presentation of Financial Statements (IASB Framework). If necessary, additional criteria for the process of the technical assessment should be developed in connection with the establishment of EFRAG.
18. The existing body of IAS and SIC Interpretations as well as the IASB Framework should not be separately assessed by EFRAG but recommended as a “package” for endorsement

via the Commission to the Accounting Regulatory Committee. The IASB may decide to improve certain of the existing IAS and this would be the moment for EFRAG to provide proactive input. EFRAG could advise IASB as to which IAS could be improved. Piecemeal acceptance of the existing body of IAS would put European listed companies in a difficult position from the beginning. Moreover, the existing standards have already been compared with the Directives and only a limited number of deviations have been found. The deviations found will most likely be covered by the modernisation of the Directives.

19. Some additional tasks of EFRAG have been identified: deciding on implementation dates; choosing of options; or considering additional disclosures. These would have negative consequences for European companies from the point of view of comparability of accounts but also from a competitiveness aspect. Setting different implementation dates within Europe and thereby delaying the application of a standard or interpretation would make it no longer possible to describe the accounts as being in compliance with IAS with all related problems. Closing of options and delaying implementation dates should therefore not normally be considered by EFRAG.

Additional disclosures should be considered with care since they may cause problems for groups operating globally. However disclosures about the company (e.g. directors' remuneration) as well as all aspects of financial reporting outside the context of financial statements such as the MD&A are not covered by IAS. EFRAG should not propose additional disclosures itself but should advise via the Commission the Accounting Regulatory Committee if any additional disclosures are proposed at European level.

Implementation Guidance

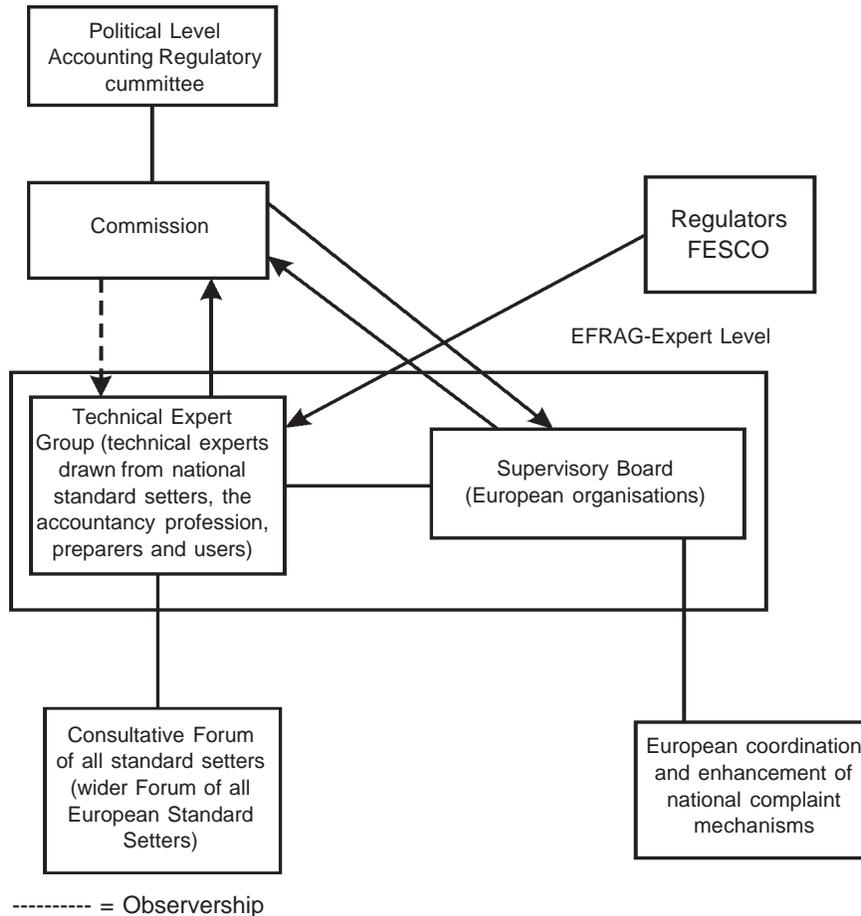
20. It is important that endorsed IAS are properly implemented. In a number of countries there is not much technical expertise with IAS. Although implementation guidance – where not

provided at IASB level – may need to be provided at national level, a forum is needed at European level to discuss and coordinate implementation issues to avoid different interpretations within and between countries. EFRAG could facilitate such a discussion and coordination and it could act as a channel to bring the issues to the SIC and IASB. Implementation guidance should be defined in a narrow sense and be clearly distinguished from interpretations. It is however recognised that specific national issues remain which are unique for one country and need to be addressed at the national level. A regular contact needs to be established with the SIC/IASB. So far in many countries, IAS are only applied through national standards as part of a certain jurisdiction and not directly. Direct application needs a form of coordination at a European level.

21. EFRAG should communicate issues for interpretation and suggested solutions to the SIC for new and existing IAS. EFRAG should not issue interpretations itself. EFRAG should discuss implementation problems and where necessary – in absence of IASB implementation guidance and after consultation with the IASB – coordinate at European level, resulting in coordinated national guidance. EFRAG could be involved in any IASB debate on implementation guidance and interpretation since this still needs to be solved at IASB level.

Organisation

Proposed structure and context of EFRAG:



22. All interested parties in Europe in financial reporting have to assume their part of the responsibilities and have to contribute to the establishment of the EFRAG. Involvement of users, preparers, the accountancy profession and other interested parties at the European level in addition to national standard setters enhances the legitimacy and credibility of the EFRAG. In order to achieve this EFRAG should consist of a relatively small Technical Expert Group and a Supervisory Board of European Organisations. The Supervisory Board would guarantee representation of the full European interest and undertake the governance tasks which would otherwise need to be carried out by the technical

experts themselves. Legitimacy would be derived from the representation of European organisations and, in addition, a proper geographical spread of nationality of the actual members involved in the Supervisory Board could be aimed at.

Technical Expert Group

23. The Technical Expert Group should carry out the technical work of EFRAG as described under Function and tasks. Members of the Technical Expert Group should be highly qualified people with proper knowledge of the European and international financial reporting scene. Members of the Technical Expert Group should have experience in standard setting (now or in the past) and/or be in close contact with national standard setters and/or the IASC and/or have experience in applying IAS. The majority of the members of the Technical Expert Group may come from the Boards of the national standards setters. Some of the members coming from the Board of national standard setters will continue their work with the national standard setter in addition to their membership of EFRAG. Members of the Technical Expert Group should represent the European point of view rather than the individual organization they come from. Liaison with all national standard setters is envisaged through the Consultative Forum of Standard Setters. Board members of national standard setters have usually different backgrounds in that they come from preparers, users, accounting profession, etc. Standard setting experience will ensure the necessary technical expertise of the individuals involved. Also direct representation of preparers, users and the accountancy profession with experience in standard setting would be possible. Members of the Technical Expert Group will be accountable to the Supervisory Board and should work in the European interest. Their role is to develop a view on proposed IAS and their application within Europe through technical analysis and wide consultation amongst national standard setters, regulators, the accounting profession, preparers and users.
24. The Technical Expert Group should be limited in size (8 to 10 members) in order to be workable. A reasonable

geographical balance would be respected so that the Technical Expert Group would not be dominated by any particular country or grouping. All members would come from countries in the EEA. Direct membership of the Technical Expert Group is not the only way to influence the EFRAG process, there is a wide consultation process envisaged with open and transparent procedures. Legitimacy is also achieved by the Supervisory Board of European organisations and by the Consultative Forum of all standard setters.

25. The Commission should have a role within the Technical Expert Group as observer in order to provide the necessary link with the Accounting Regulatory Committee. Also other key persons of the Accounting Regulatory Committee could have the right to be an observer to the Technical Expert Group. In this way, the liaison with the Accounting Regulatory Committee would be ensured. Regulators (FESCO) may have observership within the Technical Expert Group or a close relation should be maintained with the regulators.
26. The Chairman of the Technical Expert Group will be appointed by the Supervisory Board. The term for chairmanship is normally for one term of two and half years, but can, at the decision of the Supervisory Board, be extended with maximum one additional term.
27. Membership of the Technical Expert Group would be on a part-time (20% - 50%) basis. It is envisaged that members could remain in their national environment by operating from their home country. In this way, it might be easier to attract people with expertise and a broad geographical background. The term of membership would be two and a half years, renewable. Different terms of appointment could be adopted initially to avoid all members changing at the same time.
28. Members would be selected by the Supervisory Board on recommendation of national standard setters and other relevant organisations.
29. An open and transparent due process should be established for the functioning of the Technical Expert Group and its

consultation process before the Technical Expert Group is put in place by the Supervisory Board. The due process and voting rules should form part of the constitution of the EFRAG (statutes/internal rules).

Consultative Forum of Standard Setters

30. The Technical Expert Group should meet with a Consultative Forum of all European standard setters at regular intervals. This Consultative Forum could be seen as an integrated part of EFRAG. The Consultative Forum should be involved in determining the work programme of EFRAG, would provide input to the Technical Expert Group and would be consulted by the Technical Expert Group on major projects. It could also provide a forum to exchange views.

The Consultative Forum would include standard setters from EEA, Switzerland but also from Central and Eastern European countries (accession candidates).

The Consultative Forum would be chaired by the Chairman of the Technical Expert Group.

Wider consultation

31. Making use of the existing consultation structures operated by the IASC, national standard setters and other relevant organisations, the EFRAG should organise a wide and early consultation on the pro-active role obtaining the view of interested parties in Europe through a Consultative Network. This concerns in particular research papers developed by EFRAG itself but also the commenting on exposure drafts, draft interpretations and consultative papers from the IASB. Such a consultation process could be organised with help of a website.

In case of a potential negative advice (non-endorsement of an IAS), it is essential that a full consultation takes place as soon as it becomes likely during the process that such a rejection of an IAS may need to take place. In case of a

positive advice, no consultation after publication of the IAS is deemed necessary.

Supervisory Board

32. A governance structure needs to be put in place which monitors the Technical Expert Group to ensure that all views within Europe are taken into account, and to carry out a Trustees function. The Supervisory Board should involve European organisations (representing the constituencies of the national standard setters) and bring European democracy to the process.

Stock exchanges have to play an important role now that many of the initiatives and announced mergers move in the direction of a European capital market. FESCO and industry specific regulators such as those for the banking and insurance industry could have an observer role, since there needs to be a close cooperation with the enforcement structure.

33. In the Supervisory Board, the following European organisations are involved as founding fathers of EFRAG:
- business/preparers (UNICE)
 - accountancy profession (FEE)
 - European credit sector associations (EBF, ESBG, GEBC)
 - insurance (CEA)
 - stock exchanges (FESE)
 - financial analysts (EFFAS)
 - SMEs (UEAPME and EFAA)

The Supervisory Board should consist of approximately 20 members representing the European organisations. When appointing their representatives the European organisations should seek a broad geographical representation. A separate

paper sets out the structure of the Supervisory Board, including the number of seats and the number of votes. This paper is annexed to these proposals.

The Commission and FESCO and other supervisors could participate as observers.

34. The tasks of the Supervisory Board would include:
- selection of members of the Technical Expert Group on nomination of standard setters, and other relevant organisations
 - appointment of the Chairman of the Technical Expert Group
 - advising on the work program of the Technical Expert Group
 - monitoring Technical Expert Group
 - approval of budget of EFRAG
 - organisation of funding of EFRAG

The Supervisory Board should not be involved with the technical and operational work and solutions advised by the Technical Expert Group.

35. In case of a negative advice (non-endorsement of an IAS), the Supervisory Board will submit a separate statement directly to the Political Level to provide its commentary. This statement will be in addition to the negative advice of the Technical Subgroup that has been directly submitted to the Political Level.
36. The Supervisory Board should elect a Chairman from amongst its members.
37. The Supervisory Board should meet at least once a year and more often if needed.

38. The Supervisory Board should endeavour to operate a consensus approach but, in the absence of a consensus, the formal voting procedure should be based on a simple majority. A qualified majority of two/third would be needed on major decisions such as funding and nominations of members and Chairman of the Technical Expert Group.
39. Organisations represented on the Supervisory Board should participate in the funding of EFRAG.

Staff

40. EFRAG would need staff support in order to be able to fulfil its pro-active role in particular that of a wide consultation with interested parties in Europe and the coordination between the organisations involved. In addition there should be administrative support.
41. The technical staff should meet the same technical requirements as the members of the Technical Expert Group.
42. Staff could work on a full-time or part-time basis. Part-time staff would have the advantage of having a direct connection with practice and up to date experience. Technical Staff could be on secondment from national standard setters or other relevant organisations.
43. It could be envisaged to delegate research projects on a project basis to national standard setters or other relevant organisations, which could reduce the number of staff involved.
44. To support the tasks of EFRAG (as described in Function and tasks), the staff should consist of the equivalent of 3 technical staff and one administrative staff. The size of the total resources required would depend on to what extent the pro-active function and tasks are taken up and when and to what extent the work is carried out by the Technical Expert Group or is seconded on a project basis (see also funding) and to what extent the staff is seconded from national standard setters or other relevant organisations. The staff

could be put in place on a gradual basis, assuming that the research part of the pro-active function is an evolutionary process [see also para 51 and 52].

Legal form

45. The Commission should recognise EFRAG as the appropriate body to advise on assessing of standards and to provide such advice via the Commission to the Accounting Regulatory Committee.
46. EFRAG should be a private independent organisation in the form of a foundation. It could be established under Belgian law in the form of an international association.

Political (regulatory) level

47. These proposals do not address the tasks of the political (regulatory) level – Accounting Regulatory Committee – or, other than in general terms, the relation between EFRAG and the Accounting Regulatory Committee. The Accounting Regulatory Committee would be assumed to have considered the advice of the Technical Expert Group provided via the Commission. It is also understood that the Accounting Regulatory Committee would be high level and have the authority to take rapid action.

Funding

48. It is important that EFRAG is funded on a scale that is sufficient in size to accommodate the functions and tasks as described before. Therefore the size of the budget needs to be clear and agreed in advance. Funding is the task of the Supervisory Board and one of their first tasks is to prepare and approve a detailed budget and subsequently to arrange for the detailed funding and allocation of funding.
49. Funding could take place in different forms in addition to money:
 - secondment of (part-time) staff (from national standard setters or other organisations)

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- secondment of projects (projects carried out on behalf of EFRAG)
 - direct support of members of the Technical Expert Group (20% - 50% part-time), so that there is no cost to EFRAG
 - provision of administrative support without charge
 - provision of office and meeting facilities without charge
50. All organisations represented on the Supervisory Board should participate in the funding of EFRAG.
51. The total costed budget of EFRAG is estimated to around 1,1 to 1,6 million Euro. This budget is based on the following assumptions:
- 8 to 10 members Technical Expert Group (20% - 50% part-time) are supported by the organisations/standard setters where they come from as a contribution in kind and are not included in the budget
 - equivalent of 3 technical staff and one admin staff
 - office and logistics costs
 - website.
52. The budget of 1,1 to 1,6 million euro should be seen as the upper limit within which the Supervisory Board has to work. The Supervisory Board members are not paid and no costs will be reimbursed to them (they are supported by the organisation which they represent). The budget for additional fundamental research as described in Paragraph 6 is estimated at 500.000 Euro. This work could also be partly outsourced to standard setters or other relevant organisations without charge.

Relation to Other Bodies

National Standard Setters

53. Experience in standard setting as a requirement for membership of the Technical Expert Group will ensure a close link with the national standard setters (paragraph 23). A Consultative Forum of Standard Setters is to be created and could be seen as an integrated part of EFRAG (paragraph 30) National standard setters would also be expected to second staff to the technical staff of EFRAG and/or carry out projects on behalf of EFRAG.
54. With respect to implementation guidance (see also Function and tasks), the Technical Expert Group could also provide a forum of national standard setters.
55. National standard setters would work on IAS through EFRAG, but would also be commenting separately on the various IASB exposures and papers and have their direct relationship with IASB (at least the bigger standard setters). National standard setters continue their work on the financial reporting of companies other than listed companies. There will be a continuing convergence between national standards and IAS and increased liaison between European standard setters. An integral approach towards financial reporting is needed at least in the case of consolidated accounts. Any divergence in financial reporting principles between listed companies and other companies should be avoided as far as possible.

European Standard Setters (E5)

56. The E5 standard setters have started to meet informally (E5+2 will disappear when the new IASC is effective, since there would be no longer a need for Board preparations). The Technical Expert Group would replace these meetings since the same standard setters would be involved. In addition there will be meetings of the Consultative Forum in which all standard setters are expected to participate and which gives the standard setters of other countries the opportunity to be involved in IAS matters, for which they may not otherwise

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have sufficient resources. Also non-EU/EEA standard setters could be involved.

Accounting Advisory Forum

57. The Accounting Advisory Forum would not have a role anymore, since all parties involved would be involved in EFRAG. In order to minimise divergence in financial reporting, there should only be one body of advice.

Contact Committee

Contact Committee

58. The Contact Committee is officially established by the Accounting Directives to advise on (amendments to) the Directives and would continue to have its role in this respect. With the appointment of EFRAG, the activities and work of the Contact Committee may need to be modified. Any duplication of work should to the extent possible be avoided.

Accounting Technical Sub Committee

59. Since the Technical Sub Committee is mainly working on commenting on proposed IAS, it will probably no longer be necessary.

IASC

IASB

60. It is expected that IASB would directly liaise with the Technical Expert Group.

SIC

61. The Technical Expert Group would directly liaise with and communicate to the SIC on interpretation and implementation issues (see also under Function and tasks).

Standards Advisory Council

62. It is not clear how the Standards Advisory Council may be structured; some national standard setters or its representatives may be members (that are not on the Board). It should be the Chairman of the Technical Expert Group that would have a seat.

Enforcement¹

63. Any requirement to use accounting standards will only be effective if standards are also enforced. In relation to enforcement, several aspects can be considered: self-enforcement, statutory audit, oversight system (by stock exchange, stock exchange regulator or government department) and sanctions/complaints. Global rules, IAS, require global enforcement. Until IAS are enforced at global level, uniform enforcement of IAS in Europe should be the objective to ensure a level playing field where national enforcement systems may otherwise differ.
64. Enforcement is an important issue that needs to be further addressed in Europe. Discussions are taking place within the Commission, FESCO and other interested parties, illustrating the need for improving the European Union's current regulatory framework. National practices and systems should be coordinated and common enforcement rules should be developed in order to start harmonising the wide differences in Europe. Furthermore it could be envisaged to put a system in place to deal with complaints against companies or auditors related to IAS financial statements in Europe.

Other**Time table**

65. Despite the fact that the requirement to use endorsed IAS becomes effective for the financial year 2005, EFRAG should

¹ FEE is to publish a study on the enforcement mechanisms in operation in European countries.

become operational as soon as possible now the IASB has been established. This could be envisaged for the middle of 2001.

Review of endorsement mechanism

66. There will be a need to review the endorsement mechanism after a period of operation, for example in five years time. This would also include the functioning and effectiveness of EFRAG. Each of the main functions should be reviewed. The Supervisory Board would evaluate the efficiency, functioning and effectiveness of EFRAG on a continuing basis and make whatever adjustments deemed necessary.

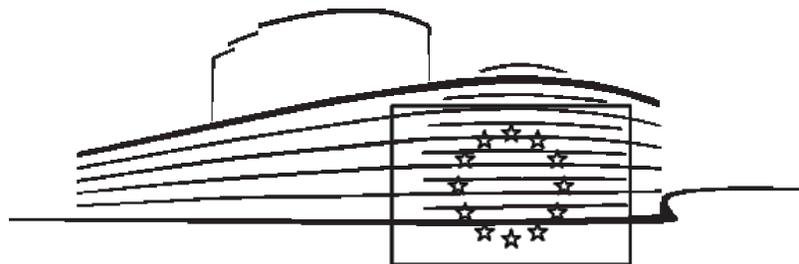
Modernisation of the Accounting Directives

68. The modernisation of the Accounting Directives and the need for compliance with Accounting Directives by listed companies are not addressed in detail in these proposals. The Technical Expert Group should be involved in advising on any modernisation of the Directives.

Annexure 4

EUROPEAN PARLIAMENT

2001-2002



TEXTS ADOPTED

at the sitting of

Tuesday

15 May 2001

TA 11

PROVISIONAL EDITION

PE 303.669

EN

EN

Company accounts ***I

A5-0130/2001

Proposal for a European Parliament and Council directive amending Directives 78/660/EEC and 83/349/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies (COM(2000) 80 - C5-0106/2000 - 2000/0043(COD))

The proposal was amended as follows:

Text proposed by the Commission¹ Amendments by Parliament

Amendment 1

RECITAL 1

<p>(1) Article 32 of <i>the</i> Directive 78/660/EEC based on Article 54(3)(g) (<i>now 44(2)(g)</i>) of the Treaty requires the items shown in the annual accounts to be valued on the basis of the principle of purchase price or production cost.</p>	<p>(1) Article 32 of Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies requires the items shown in the annual accounts to be valued on the basis of the principle of purchase price or production cost.</p>
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Amendment 2

RECITAL 3

<p>(3) Article 29 of Directive 83/349/EEC based on Article 54(3)(g) (<i>now 44(2)(g)</i>) of the Treaty requires assets and liabilities to be included in consolidated accounts to be valued in accordance with Articles 31 to 42 and 60 of Directive 78/660/EEC.</p>	<p>(3) Article 29 of Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts requires assets and liabilities to be included in consolidated accounts to be valued in accordance with Articles 31 to 42 and 60 of Directive 78/660/EEC.</p>
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Amendment 3
RECITAL 3 A (new)

1 OJ C 311 E, 31.10.2000, p. 1. **(3a) Article 1 of Council Directive**

86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions⁽¹⁾ requires assets and liabilities to be valued in accordance with Articles 31 to 42 of Directive 78/660/EEC, except when Directive 86/635/EEC provides otherwise.

(¹) OJ L 372, 31. 12. 1986, p. 1

Amendment 4
RECITAL 4

(4) The annual and consolidated accounts of insurance banks and other financial institutions are prepared in accordance to Council Directive 86/635/EEC, and the annual and consolidated accounts of insurance undertakings are prepared in accordance with Council Directive 91/674/EEC OF 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings⁽¹⁾. The amendments in this Directive do not amend the provisions of Directives 86/635/EEC and 91/674/EEC, but the Commission may bring forward similar proposals to amend these (4) The annual and consolidated accounts of insurance undertakings are prepared in accordance with Council Directive 91/674/EEC OF 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings⁽¹⁾. The amendments in Directives **78/660/EEC and 83/349/EEC** do not **concern** the provisions of Directive 91/674/EEC, but the Commission may bring forward similar proposals to amend **that** Directive after having consulted the relevant advisory **committee**.

(¹) OJ L 374, 31. 12. 1991, p. 7.

Directives after having consulted the relevant advisory **committees**.

Amendment 6

RECITAL 7

(7) The Communication of the Commission on “Accounting Harmonisation: A New Strategy vis-à-vis International Harmonisation”, called for the EU to work to maintain consistency between Directives **78/660/EEC and 83/349/EEC** and developments in international accounting standard setting. (7) The Communication of the Commission on “Accounting Harmonisation: A New Strategy vis-à-vis International Harmonisation” called for the EU to work to maintain consistency between **Community Accounting** Directives and developments in international accounting standard setting, **in particular within the International Accounting Standards Committee (IASC)**.

Amendment 7

RECITAL 8

(8) In order to maintain consistency between internationally recognised accounting standards and Directives 78/660/EEC **and Directive 83/349/EEC**, it is necessary to amend these Directives in order to allow for certain financial assets and liabilities to be valued at fair value. This will enable European companies to report in **line** with (8) In order to maintain **such** consistency between internationally recognised accounting standards and Directives 78/660/EEC, 83/349/EEC **and 86/635/EEC**, it is necessary to amend these Directives in order to allow for certain financial assets and liabilities to be valued at fair value. This will enable European companies to report in

current international **conformity** with current
developments. international developments.

Amendment 8
RECITAL 8 a (new)

(8a) This amendment to Directives 78/660/EEC, 83/349/EEC and 86/635/EEC is in line with the Commission Communication to the European Parliament and the Council of 13 June 2000 on the EU Financial Reporting Strategy: the way forward⁽¹⁾ which proposes the use of recognised International Accounting Standards for the preparation of consolidated financial statements by listed companies. The purpose of this amendment is to allow the application of the International Accounting Standard dealing with the recognition and measurement of financial instruments.

⁽¹⁾ COM(2000) 359.

Amendment 9
RECITAL 9

(9) Comparability of financial information throughout the Community makes it necessary to require Member States to introduce a system of fair value accounting. Member States **may** permit **or require** the adoption (9) Comparability of financial information throughout the Community makes it necessary to require Member States to introduce a system of fair value accounting **for certain financial instruments**. Member States

of that system **to all or certain categories** of companies **and to** both the annual and consolidated accounts or **to** consolidated accounts only.

that system **by all companies or any classes** of companies **subject to Directives 78/660/EEC, 83/349/EEC and 86/635/EEC in respect of** both the annual and consolidated accounts or **in respect of** consolidated accounts only. **Further, Member States should be permitted to require the adoption of that system in respect of all companies or any classes of companies for both the annual and consolidated accounts or for the consolidated accounts only.**

Amendment 10
RECITAL 10

(10) Fair value accounting should only be possible for those items where there is a **sufficiently developed** international consensus that fair value accounting is appropriate. Fair value accounting should **therefore** not be applied to all financial assets and liabilities.

(10) Fair value accounting should only be possible for those items where there is a **well-developed** international consensus that fair value accounting is appropriate. **The current consensus is that** fair value accounting should not be applied to all financial assets and liabilities, **for instance not to most of those relating to the banking book.**

Amendment 11

RECITAL 11

(11) The notes on the accounts should include certain information concerning **the items** in the balance sheet which have been measured at fair value. The annual report should give an indication of the company's risk management objectives and **strategies** in relation to its use of financial instruments.

(11) The notes on the accounts should include certain information concerning **financial instruments** in the balance sheet, which have been measured at fair value. The annual report should give an indication of the company's risk management objectives and **policies** in relation to its use of financial instruments.

Amendment 12

RECITAL 11 a (new)

(11a) Derivative financial instruments can have a significant impact on the financial position of companies. Disclosures on derivative financial instruments and their fair value are considered appropriate even if the company does not use fair value accounting. In order to limit the administrative burden for small companies, Member States should be allowed to exempt small companies from this disclosure requirement.

Amendment 13

RECITAL 12

(12) Accounting for financial instruments is a fast evolving area of financial reporting which necessitates a **periodic** review.

(12) Accounting for financial instruments is a fast evolving area of financial reporting which necessitates a review **by the**

This review should be carried out through the Contact Committee on the Accounting Directives in order to give Member States the opportunity to report on their experiences with fair value accounting in practice. ***Commission based on the experiences of Member States with fair value accounting in practice.***

Amendment 14

ARTICLE 1, PARAGRAPH 1 Article 42 a (Directive 78/660/EEC)

1. By way of derogation from Article 32, Member States shall permit or require in respect of all companies or any classes of companies valuation at fair value of ***all balance sheet items, including derivative financial instruments, except for the items listed in paragraph 3.*** 1. By way of derogation from Article 32 ***and subject to the conditions in paragraphs 2 to 4 of this Article***, Member States shall permit or require in respect of all companies or any classes of companies valuation at fair value of financial instruments, ***including derivatives.***
- 2. Member States may restrict the permission or requirement set out in paragraph 1 to consolidated accounts as defined in Directive 83/349/EEC.*** ***Such permission or requirement may be restricted to consolidated accounts as defined in Directive 83/349/EEC.***
- 3. The following items shall not be valued at fair value:*** ***2. For the purpose of this Directive, commodity-based contracts that give either contracting party the right to settle in cash or some other financial instrument shall be considered to be derivative financial instruments, except when they:***
- (a) ***balance sheet items that are not financial instruments;*** ***(a) were entered into in order to meet the company's expected purchase, sale or usage***
- (b) ***liabilities, with the exception of liabilities which are:***
- (i) ***held as part of a trading portfolio;***

(ii) **accounted for as hedged items; or** requirements, **and continue to do so;**

(iii) **derivative financial instruments.** (b) were **designated for such purpose at their inception; and**

4. Notwithstanding paragraph 1, Member (c) are expected to be settled by delivery of the commodity.

States may:

3. Paragraph 1 shall apply only to **liabilities that are:**

(a) **exclude items held-to-maturity, other than derivative financial instruments, from valuation at fair value;** (a) held as part of a trading portfolio; or

(b) **exclude originated loans and advances not held for trading purposes from valuation at fair value;** (b) derivative financial instruments.

4. Valuation according to paragraph 1 shall not apply to:

(c) **restrict the valuation at fair value to items held for trading purposes. Where this restriction is applied, all derivative financial instruments are deemed to be held for trading purposes;** (a) non-derivative financial instruments held to maturity;

(b) loans and receivables originated by the **company and not held for trading purposes; and**

(d) **exclude commodity-based contracts that were originally designated for the purposes of meeting a company's expected purchase, sale or usage requirements in that commodity and which** are expected to be settled by delivery of the commodity.

(c) **interests in subsidiaries, associated undertakings and joint ventures, equity instruments issued by the company, contracts for contingent consideration in a business combination as well as other financial instruments with such special characteristics that the instruments, according to what is generally accepted,**

should be accounted for differently from other financial instruments.

5. By way of derogation from Article 32, Member States may in respect of any assets and liabilities which qualify as hedged items under a fair value hedge accounting system, or identified portions of such assets or liabilities, permit valuation at the specific amount required under that system.

Amendment 15

ARTICLE 1, POINT 1

Article 42 b (Directive 78/660/EEC)

1. The fair value referred to in Article 42a is determined by reference to:

(a) a market value, for those **items** for which a reliable market can readily be identified. Where a market value is not readily identifiable for an **item** but can be identified for its components, the market value **of that item** may be derived from that of its components; or

(b) **the** value resulting from **established** valuation models and techniques, for those **items** for which a reliable market cannot be readily identified. Such

1. The fair value referred to in Article 42a is determined by reference to:

(a) a market value, for those **financial instruments** for which a reliable market can readily be identified. Where a market value is not readily identifiable for an **instrument** but can be identified for its components **or for a similar instrument**, the market value may be derived from that of its components **or of the similar instrument**; or

(b) **a** value resulting from **generally accepted** valuation models and techniques, for those

valuation models and techniques should ensure a reasonable approximation of the market value.

2. Those *items* that cannot be measured reliably *in a way that is free from material error and bias* by the methods described *under either (a) or (b) of paragraph 1, may not be measured at fair value and should instead* be measured in accordance with Articles 34 to 42.

instruments for which a reliable market cannot be readily identified. Such valuation models and techniques should ensure a reasonable approximation of the market value.

2. Those *financial instruments* that cannot be measured reliably by *any of* the methods described *in paragraph 1 shall* be measured in accordance with Articles 34 to 42.

Amendment 16

ARTICLE 1, POINT 1 Article 42 c (Directive 78/660/EEC)

1. Notwithstanding Article 31(1)(c)(*aa*), where a *balance sheet item has been valued at fair value* in accordance with Article 42*a(1)* a change in the *fair value of that item should* be included in the profit and loss account *in arriving at the profit or loss for the financial year.*
1. Notwithstanding Article 31(1)(c), where a *financial instrument is valued* in accordance with Article 42*b*, a change in the value *shall* be included in the profit and loss account. *However, such a change shall be included directly in equity, in a fair value reserve, where:*

2. Member States may permit or require *the gain or loss on a financial asset that is not held for trading purposes* to be *recognised* directly in equity, in a fair value reserve. *To the extent that gains and losses*
- (a) the instrument accounted for is a hedging instrument under a system of hedge accounting that allows some or all of the change in value not to be shown in the profit and loss account, or*

on such items that have been recognised in equity are actually realised, they must be removed from the fair value reserve. The Member States may lay down rules governing the use of the fair value reserve.

3. Notwithstanding paragraph 1, the change in the fair value of an item measured in accordance with Article 42b should not be included in the profit and loss account in arriving at the profit or loss for the financial year, but must be included directly in the fair value reserve where:

(a) that item is accounted for as a hedging instrument under a system of hedge accounting that allows such changes in value not to be shown in the profit and loss account, or

(b) such change in value relates to an exchange difference arising on a monetary item that forms part of a company's net investment in an affiliated foreign undertaking.

4. The fair value reserve **referred to in paragraph 3 should be reduced to the extent that the amounts shown therein are no longer necessary for the**

(b) the change in value relates to an exchange difference arising on a monetary item that forms part of a company's net investment in a foreign entity.

2. Member States may permit or require **a change in the value of an available for sale** financial asset, **other than a derivative financial instrument**, to be included directly in equity, in **the** fair value reserve.

Deleted

4. The fair value reserve **shall** be **adjusted when** amounts shown therein are no longer necessary for the implementation of **paragraphs 1 and 2.**

implementation of *the valuation methods under the circumstances referred to in sub-paragraphs (a) and (b) of paragraph 3. The Member States may lay down rules governing the use of the fair value reserve.*

Amendment 17

ARTICLE 1, POINT 2

Article 43 a (Directive 78/660/EEC)

2. The following Articles 43a, 43b and 43c are inserted:

“Article **43a**

“Article **42d**

Where valuation at fair value has been applied **under Article 42a**, the notes on the accounts **must indicate at least the following information:**

(a) the items in the balance sheet that have been measured at fair value;

(b) where fair values have been determined in accordance with Article 42b(1)(b), the significant assumptions underlying the valuation models and techniques;

(c) per category of items measured at fair value, the fair value, and the profits or losses recognised directly in the profit and loss account **and** in the fair value reserve **referred to in**

Where valuation at fair value **of financial instruments** has been applied, the notes on the accounts **shall disclose:**

(a) the significant assumptions underlying the valuation models and techniques **where fair values have been determined in accordance with Article 42b(1)(b);**

(b) per category of **financial instruments, the fair value, the changes in value included** directly in the profit and loss account **as well as changes included** in the fair value reserve;

(c) for each class of derivative financial instruments, information about the extent and the nature of the instruments, including

- Article 42c(3);** significant terms and conditions that may affect the amount, timing and certainty of future cash flows; and
- (d) for the fair value reserve referred to in Article 42c(2) and Article 42c(3) a table showing separately:** **(d) a table showing movements in the fair value reserve during the financial year.**
- (i) the amount of the reserve at the beginning of the financial year;**
- (ii) the differences included in the reserve during the financial year;**
- (iii) the amounts transferred from the reserve during the financial year and the nature of any such transfers;**
- (iv) the amount of the reserve at the end of the financial year;**
- (e) for each class of derivative financial instruments, information about the extent and nature of the **derivative financial** instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows.**

Amendment 18

ARTICLE 1, POINT 2

Articles 43 b and 43 c (Directive 78/660/EEC)

2. The following Articles 43a, 2. In Article 43(1) 43b and 43c are inserted:

(a) the reference in point 10 to “Articles 31 and 34 to 42” is replaced by a reference to

Article 43b

When a company is permitted to use valuation at fair value in accordance with Article 42a (1), but decides not to do so, the following disclosures should be given for each class of derivative financial instruments:

(a) information about the extent and nature of the derivative financial instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows;

(b) the fair value of the derivative financial instruments.

Article 43c

Where valuation at fair value has not been applied under Article 42a (1), and where a company has not made use of the option to make a value adjustment in respect of a financial fixed asset in accordance with Article 35(1)(c)(aa) and therefore carries that financial fixed asset at an amount in excess of its fair value, it should disclose:

(a) the book value and the fair value of either the individual

“Articles 31 and 34 to 42c”, and

(b) the following point is added:

“(14) Where valuation at fair value of financial instruments has not been applied in accordance with Section 7a:

(a) for each class of derivative financial instruments:

(i) the fair value of the instruments, if such a value can be determined by any of the methods prescribed in Article 42b(1);

(ii) information about the extent and the nature of the instruments; and

(b) for financial fixed assets referred to in Article 42a, carried at an amount in excess of their fair value and without use being made of the option to make a value adjustment in accordance with Article 35(1)(c)(aa):

(i) the book value and the fair value of either the individual assets or appropriate groupings of those individual assets;

(ii) the reasons for not reducing the book value, including the nature of the

assets or appropriate groupings of those individual assets; **and** evidence that provides the basis for the belief that the book value will be recovered.”

(b) the reasons for not reducing the book value, including the nature of the evidence that provides the basis for the belief that the book value will be recovered.”

Amendment 19

ARTICLE 1, POINT 2 A (new)

Article 44, paragraph 1 (Directive 78/660/EEC)

2a. The text of Article 44 (1) is replaced by the following text:

“1. Member States may permit the companies referred to in Article 11 to draw up abridged notes on their accounts without the information required in Article 43(1)(5) to (12) and (14)(a). However, the notes must disclose the information specified in Article 43(1)(6) in total for all the items concerned.”

Amendment 20

ARTICLE 1, POINT 3

Article 46 a (Directive 78/660/EEC)

3. The following Article 46a is inserted: **3. In Article 46 (2) the following point is added:**

“Article 46a

Whether or not use has been made of valuation at fair value referred to in Section 7a, the

“(f) in relation to the company’s use of financial instruments and, where material for the assessment of its assets, liabilities, financial

annual report shall give an position and profit or loss, indication of:

(a) the company's financial risk management objectives and *policies*, including its policy strategies in relation to its use for hedging each major type of financial instruments, and of forecasted transaction for how these objectives are implemented; and

- the company's financial risk management objectives and *policies*, including its policy strategies in relation to its use for hedging each major type of forecasted transaction for which hedge accounting is used, and

(b) the company's exposure to price risk, credit risk, liquidity risk, counter-party risk, cash flow risk and risk of future developments in relation to its use of financial instruments ."

- the company's exposure to price risk, credit risk, liquidity risk and cash flow risk."

Amendment 21

ARTICLE 1, POINT 3 a (new)

Article 59 (Directive 78/660/EEC)

3a. In Article 59 (2)(a) and (b) the reference to "Articles 31 to 42" is replaced by a reference to "Section 7 or 7a".

Amendment 22

ARTICLE 1, POINT 4

Article 52 a (Directive 78/660/EEC)

4. The following Article **52a** is inserted:

4. The following Article is inserted:

"Article 52a

"Article 61a

The Parliament and the Council shall, acting in accordance with the procedure laid down in Article 251 of the

Not later than 1 January 2007, the Commission shall review the provisions in Articles 42a to 42d, 43(1)(10) and (14),

Treaty, acting on a proposal 44(1), 46(2)(f) and 59(2)(a) and from the Commission and (b) in the light of the within three years of the experience acquired in adoption of this Directive, applying provisions on fair examine and, where value accounting and taking necessary, amend Articles account of international 42a, 42b, 42c, 43a, 43b, 43c developments in the field of and 46a of Directive 78/660/ accounting and, if appropriate, EEC in the light of the submit a proposal to the experience acquired in European Parliament and the applying these Articles and Council with a view to taking account of international amending those Articles.” developments in the field of accounting.”

Amendment 23

ARTICLE 2, POINT -1 (new)

Article 29 (Directive 83/349/EEC)

-1. The text of Article 29 (1) is replaced by the following text:

“1. Assets and liabilities to be included in consolidated accounts shall be valued according to uniform methods and in accordance with Sections 7 and 7a and Article 60 of Directive 78/660/EEC.”

Amendment 24

ARTICLE 2, POINT -1 A (new)

Article 34 (Directive 83/349/EEC)

-1a. In Article 34

(a) the reference in point 10 to “Articles 31 and 34 to 42” is replaced by a reference to “Articles 31 and 34 to 42c”, and

Amendment 25
ARTICLE 2, POINT 1
Article 34 a (Directive 83/349/EEC)

1. **The following Articles 34a, 34b and 34c are inserted:**

“Article 34a

Where valuation at fair value has been applied in accordance with **Article 42a(1)** of Directive 78/660/EEC, **the notes on the consolidated accounts must indicate at least the following information:**

(a) the items in the consolidated balance sheet that have been measured at fair value;

(b) where fair values have been determined in accordance with Article 42b(1)(b) of Directive 78/660/EEC, the significant assumptions underlying the valuation models and techniques;

(c) per category of items measured at fair value, the fair value, and the profits or losses recognised directly in the consolidated profit and loss account and in the fair value reserve referred to in Article 42c(3) of Directive 78/660/EEC;

(d) for the fair value reserve referred to in Article 42c(2) and

(b) the following points are added:

“14. Where valuation at fair value of financial instruments has been applied in accordance with Section 7a of Directive 78/660/EEC:

(a) the significant assumptions underlying the valuation models and techniques where fair values have been determined in accordance with Article 42b(1)(b) of that Directive;

(b) per category of financial instruments, the fair value, the changes in value included directly in the profit and loss account as well as, in accordance with Article 42c of that Directive, changes included in the fair value reserve;

(c) for each class of derivative financial instruments, information about the extent and the nature of the instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows; and

Article 42c(3) of Directive 78/660/EEC a table showing movements in the fair value reserve during the financial year”.

(i) the amount of the reserve at the beginning of the financial year;

(ii) the differences included in the reserve during the financial year;

(iii) the amounts transferred from the reserve during the financial year and the nature of any such transfers;

(iv) the amount of the reserve at the end of the financial year;

(e) for each class of derivative financial instruments, information about the extent and nature of the *derivative financial* instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows.

Amendment 26

ARTICLE 2, POINT 1

Articles 34 b and 34 c (Directive 83/349/EEC)

Article 34b

When a company is permitted to use valuation at fair value in accordance with Article 42a(1)

15. Where valuation at fair value of financial instruments has not been applied in accordance with Section 7a of Directive 78/660/EEC:

of Directive 78/660/EEC, **but** (a) for each class of derivative instruments:

decides not to do so, the following disclosures should be given for each class of derivative **financial** instruments:

(a) **information about the extent and nature of the derivative financial instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows;**

(b) the fair value of the derivative financial instruments.

Article 34c

Where an undertaking included in the consolidation has not applied valuation at fair value under Article 42a(1) of Directive 78/660/EEC and has not made a value adjustment in respect of a financial fixed asset in accordance with Article 35(1)(c)(aa) of Directive 78/660/EEC, and therefore carries that financial fixed asset at an amount in excess of its fair value the notes on the consolidated accounts must disclose:

(a) the book value and the fair value of either the individual assets or appropriate groupings of those individual assets; **and**

(i) the fair value of the instruments, **if such a value can be determined by any of the methods prescribed in Article 42b(1) of that Directive;**

(ii) **information about the extent and the nature of the instruments; and**

(b) **for financial fixed assets referred to in Article 42a, carried at an amount in excess of their fair value and without use being made of the option to make a value adjustment in accordance with Article 35(1)(c)(aa) of that Directive:**

(i) the book value and the fair value of either the individual assets or appropriate groupings of those individual assets;

(ii) the reasons for not reducing the book value, including the nature of the evidence that provides the basis for the belief that the book value will be recovered.”

(b) the reasons for not reducing the book value, including the nature of the evidence that provides the basis for the belief that the book value will be recovered.”

Amendment 27

ARTICLE 2, POINT 2

Article 36 a (Directive 83/349/EEC)

2. The following Article 36a is inserted: **2. In Article 36 (2) the following point is added:**

“Article 36a

Whether or not use has been made of valuation at fair value referred to in Section 7a of Directive 78/660/EEC, the consolidated annual report shall give an indication of :

(a) the undertaking’s financial risk management objectives, and how these objectives are met through its use of financial instruments; and

(b) information on the undertaking’s exposure to price risk, credit risk, liquidity risk, **counter-party risk**, cash flow risk **and risk of future developments in relation to its use of financial instruments.”**

“(e) in relation to the use by the undertakings of financial instruments and, where material for the assessment of assets, liabilities, financial position and profit or loss,

- the financial risk management objectives and **policies of the undertakings, including their policies for hedging each major type of forecasted transaction for which hedge accounting is used,** and

- the exposure to price risk, credit risk, liquidity risk **and** cash flow risk.”

Amendment 28
ARTICLE 2, POINT 3
Article 48 (Directive 83/349/EEC)

3. The following Article 48 is Deleted inserted:

“Article 48

The Parliament and the Council shall, acting in accordance with the procedure laid down in Article 251 of the Treaty on a proposal from the Commission and within three years of the adoption of this Directive, examine and, where necessary, amend Articles 34a, 34b, 34c and 36a of Directive 83/349/EEC in the light of the experience acquired in applying these Articles and taking account of international developments in the field of accounting.”

Amendment 29
ARTICLE 2, POINT 3 A (new)
Article 50 a (new) (Directive 83/349/EEC)

3a. The following Article is inserted:

“Article 50a

Not later than 1 January 2007, the Commission shall review the provisions in Articles 29(1), 34(10), (14) and (15) and 36(2)(e) in the light of the experience acquired in

applying provisions on fair value accounting and taking account of international developments in the field of accounting and, if appropriate, submit a proposal to the European Parliament and the Council with a view to amending those Articles.”

Amendment 30
ARTICLE 2 a (new)

Article 2a

Directive 86/635/EEC is hereby amended as follows:

The text of Article 1 (1) is replaced by the following text:

“1. Articles 2, 3, 4(1), (3) to (5), 6, 7, 13, 14, 15(3) and (4), 16 to 21, 29 to 35, 37 to 41, 42 first sentence, 42a to 42d, 45(1), 46(1) and (2), 48 to 50, 50a, 51(1), 56 to 59, 61 and 61a of Directive 78/660/EEC shall apply to the institutions mentioned in Article 2 of this Directive, except where this Directive provides otherwise. However, Articles 35(3), 36, 37 and 39(1) to (4) of this Directive shall not apply with respect to assets and liabilities that are valued in accordance with Section 7a of Directive 78/660/EEC.”

Amendment 31

ARTICLE 3, PARAGRAPH 1, SUBPARAGRAPH 1

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive before.....
1. Member States shall bring into force the laws, regulations and provisions necessary for with this Directive before **1 January 2004**. They shall forthwith inform the Commission thereof.

Amendment 32

ARTICLE 4

Article 4

Deleted

This Directive shall enter into force on the twentieth day following its publication in the Official Journal of the European Communities.

European Parliament legislative resolution on the proposal for a European Parliament and Council directive amending Directives 78/660/EEC and 86/349/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies (COM(2000) 80 – C5-0106/2000 – 2000/0043(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2000) 80)¹,
- having regard to Articles 251(2) and 44 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0106/2000),
- having regard to Rule 67 of its Rules of Procedure,

- having regard to the report of the Committee on Legal Affairs and the Internal Market (A5-0130/2001),
 1. Approves the Commission proposal as amended;
 2. Asks to be consulted again should the Commission intend to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Annexure 5

IP/01/770

Brussels, 31 May 2001

Financial reporting: Commission welcomes adoption of fairvalue accounting Directive

The European Commission has welcomed adoption on 31 May by the EU's Council of Ministers and the European Parliament of a Directive to modernise EU accounting rules by introducing the "fair value" accounting method. The Directive amends the EU's Accounting Directives to take account of developments in markets (such as widespread use of so called derivatives), business and international accounting standards. It will make it easier for European companies raising capital worldwide to comply with the financial reporting requirements of international capital markets and thus compete on equal terms with non-European competitors. The fact that this Directive has been adopted only 15 months after it was proposed by the Commission (see IP/00/187) highlights the effectiveness of the extremely cooperative and productive approach that the Commission, Parliament and Council have taken to working together on this initiative. The Directive forms part of the Financial Services Action Plan (see IP/00/1269).

Internal Market Commissioner Frits Bolkestein, said: "This Directive will help European companies to prepare financial statements that are accepted and understood around the world. Aligning the provisions of the Accounting Directives with existing international standards on fair value accounting will help European companies compete in international capital markets on equal terms with their non-European competitors. The rapid adoption of this Directive provides a very positive example of the EU institutions working efficiently together to adopt legislation quickly. It is an example that could and should be followed for other legislative proposals."

The Directive amends the 4th Directive on Annual Accounts, the 7th Directive on consolidated accounts and the Bank Accounts Directive

to enable the valuation of certain financial instruments at fair value. The fair value of financial instruments is determined by the market value or generally accepted valuation models if there is not a reliable (liquid) market. Nearly all changes in fair value, even though not realised, need to be shown in the company's profit and loss account. Fair value provides a more accurate view of a company's financial position and performance.

The main objective of the Directive is to enable companies to fully apply International Accounting Standards (IAS), including IAS 39 on the valuation of financial instruments that is mandatory as of financial year 2001, within the framework of the Accounting Directives.

The Directive defines those financial instruments that can be fair valued in line with IAS 39. It also lays down rules for Member States to define the scope of companies that shall be permitted, or can be required, to use fair value. A Member State can, for example, permit or require fair value only for listed companies. The Directive requires that all companies disclose information on derivative financial instruments such as options, swaps, and futures in the notes on the accounts. However, small companies can be excluded from this disclosure.

The amendment will not replace historic cost as the basis of accounting valuation in the Accounting Directives but will complement it, particularly since there is no international consensus that fair value accounting is appropriate in all cases. For example, there is as yet no international agreement on whether a company should be required to fair value its own debt or whether such fair value should take account of the company's own credit risk. Fair value accounting will therefore not be permitted for balance sheet items such as fixed assets (for example land and buildings or plant and equipment). Similarly, certain financial instruments, such as long-term debt, will continue to be stated at historical cost.

Although banks are included in the scope of the Directive, it should be clear that this is not about the introduction of "full" fair value reporting, a concept raising concerns with the banking industry, which is presently being discussed at international level and which will be assessed on its own merits by the Commission.

Close co-operation between the Commission, Parliament and Council has allowed accelerated adoption of this Directive with only one Parliamentary reading, a possibility created by the Amsterdam Treaty and applied for the first time in the area of the Internal Market.

For further information on the Fair Value Accounting Directive, see the Europa internet site at: http://europa.eu.int/comm/internal_market (look under Accounting).

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 6 June 2001

COM (2001) 1493 final

Draft

COMMISSION DECISION

of 6 June 2001

establishing the European Securities Committee

(Text with EEA relevance)

(2001/



EXPLANATORY DUM

1. GENERAL COMMENTS

1.1. Building a single market for financial services

The completion of a genuine single market for financial services is crucial for economic growth and job creation in the European Union. It will increase European economic competitiveness and contribute to economic and social cohesion.

The single market for financial services remains incomplete. Markets remain segmented. There are relatively low levels of cross-border service provision. To address this, in May 1999, the Commission adopted an Action Plan for Financial Services¹ that identified a series of actions required to construct a single European financial

¹COM (1999) 232 final

market. At the Lisbon European Council in March 2000, and at the Stockholm European Council in March 2001, the European Heads of State or Government called for full implementation of the Action Plan by 2005.

A Committee of Wise Men on the Regulation of European Securities Markets was set up by the Council (ECOFIN) in July 2000. Its mandate was:

- to assess the current conditions for implementation of the regulation of the securities markets in the European Union;
- to assess how the mechanism for regulating the securities markets in the European Union can best respond to developments underway on the securities markets; and
- in order to eliminate barriers and obstacles, to propose as a result scenarios for adapting current practices in order to ensure greater convergence and co-operation in day-to-day implementation and take into account new developments on the securities markets.

The Committee of Wise Men delivered its final report in February 2001. The Stockholm European Council welcomed this report and approved a Resolution on more effective securities market regulation in the European Union which stated that :

“Financial markets play a crucial role in the overall economy of the European Union. Rapid implementation of the prioritised Financial Services Action Plan is therefore of utmost importance. The creation of a dynamic and efficient European Securities Market is an essential element of this strategy”.

Every effort should be made by all parties concerned to implement key steps for achieving an integrated securities market by the end of 2003, including notably the priorities set out in the report by the Committee of Wise Men on the Regulation of European Securities Markets, and recognising also the need for further convergence of supervisory practices and regulatory standards.

To achieve this the legislative process must be speeded up. The regulation of securities markets needs to be sufficiently flexible to be able to respond to market developments and to ensure that the European Union is competitive and can adapt to new market practices and regulatory standards, while respecting the requirements of transparency and legal certainty.

This can and must be achieved whilst fully respecting the Treaty provisions, the prerogatives of the institutions concerned and the current institutional balance.”

The Stockholm European Council Resolution called for the implementation of the four-level regulatory approach proposed in the Committee of Wise Men's report to make the regulatory process for EU securities legislation more effective and transparent and also welcomed the intention of the Commission immediately to establish a European Securities Committee. It will comprise high-level representatives of Member States and will be chaired by the Commission. This Committee will be consulted by the Commission on policy issues in particular, but not only, for the kind of measures the Commission might adopt in the field of securities.

The Stockholm European Council also welcomed the intention to establish a Committee of European Securities Regulators, as proposed in the Wise Men's report to assist the Commission, comprising senior representatives from national public authorities competent in the field of securities. This Committee will advise the Commission in particular on draft implementing measures in the field of securities.

The present Decision establishes the European Securities Committee as an advisory body. It will be called upon in the future to act in a regulatory capacity, within the framework of Council Decision 1999/468/EC of 28 June 1999² laying down the procedures for the exercise of implementing powers conferred on the Commission. Its regulatory functions will be defined in future legislation.

²20J n° L 184, 17/7/1999, p. 23

1.2. Towards a more efficient regulatory process

In order to speed up the regulatory process and to make it more flexible and efficient, a fourlevel regulatory approach must now be implemented. The whole process should take full account of the conceptual framework of overarching principles set out in the report.

Level 1 will consist of legislative acts, namely Directives or Regulations, adopted in codecision by the Council and the European Parliament on the basis of the EC Treaty. The Council and the European Parliament will agree on the nature and extent of the implementing measures to be decided at Level 2 on the basis of Commission proposals. As stated in the Stockholm European Council Resolution, *“the split between framework principles (level 1) and implementing measures (level 2) should be determined on a case-by-case basis in a clear and transparent way.”*

The European Council indicated in its Resolution that *“Level 2 implementing measures should be used more frequently, to ensure that technical provisions can be kept up to date with market and supervisory developments.”*

Implementing technical measures will be adopted at **Level 2** in application of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

The key objective of **Level 3** will be to ensure consistent and timely implementation of Level 1 and 2 acts by enhanced co-operation and networking among EU securities regulators through the Committee of European Securities Regulators.

At **Level 4**, the Commission and the Member States will strengthen the enforcement of Community law.

1.3. The European Securities Committee (ESC)

The ESC will act in both advisory and regulatory capacities in the field of securities. Acting in its **advisory** capacity, and in line with the Stockholm Council Resolution, the ESC will be consulted by

the Commission on policy issues, in particular, but not only, for measures the Commission may propose at Level 1. In this respect, it will take on the functions of the existing High Level Securities Supervisors Committee. The ESC will act in this advisory capacity from the entry into force of the present Decision.

In order to ensure close links between both committees, the chairperson of the Committee of European Securities Regulators will participate at the meetings of the ESC as an observer.

Subject to specific legislative acts proposed by the Commission and adopted by the European Parliament and the Council, the Securities Committee should also function as a **regulatory** committee in accordance with the 1999 Decision on comitology to assist the Commission when it takes decisions on implementing measures under Article 202 of the EC Treaty.

Meetings and missions costs will be met from existing appropriations allocated for the High Level Securities Supervisors Committee. Therefore there will be no need for extra-funding for the ESC.

The Commission will inform the European Parliament on a regular basis of the ESC's proceedings acting under its regulatory capacity. It will send it at the same time and on the same terms as to the members of the ESC, the agendas for Committee meetings, the results of any votes and the summary records of meetings, as well as the list of the authorities to whom the representatives of the Member States belong.

2. DESCRIPTION OF ARTICLES

Article 1 – Creation of the European Securities Committee

This Article formally establishes the ESC.

Article 2 – Role of the ESC

The ESC will advise the European Commission in the field of securities.

Article 3 –Composition

The ESC comprises representatives of Member States. The Commission will chair the ESC.

In order to ensure an effective link between the ESC and the Committee of European Securities Regulators, the chairperson of the CESR will participate at the meetings of the ESC as an observer.

The ESC may invite experts and observers to its meetings, for instance experts from the European Central Bank, where this is relevant.

Article 4 – Working groups

The ESC will be entitled to set up working groups.

Article 5 - Rules of procedure and secretariat

The ESC will adopt rules of procedure.

The Commission will provide the secretariat of the ESC.

Article 6 – Date of taking up duties

The Committee will take up its duties on 7 June 2001.

Draft**COMMISSION DECISION****of****establishing the European Securities Committee****(Text with EEA relevance)****(2001/..EC)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Whereas:

- (1) The freedom to provide services and the free movement of capital constitute priority objectives of the Community, as referred to in Articles 49 and 56 of the Treaty,
- (2) Building a genuine Internal Market for financial services in accordance with the principle of an open market economy with free competition is crucial for increasing economic growth and job creation in the Community,
- (3) The Commission Action Plan for Financial Services¹ identifies a series of actions that are required in order to complete the single market for financial services and stresses the necessity to set up a Securities Committee in order to contribute to the elaboration of community legislation in the securities field,
- (4) At its meeting in Lisbon in March 2000, the European Council called for the implementation of this Action Plan by 2005,
- (5) On 17 July 2000, the Council set up the Committee of Wise Men on the Regulation of European Securities Markets,

¹ COM (1999) 232 final

- (6) In its final report, the Committee of Wise Men called for the establishment of two advisory committees, the European Securities Committee, comprising high-level representatives of Member States, and the Committee of European Securities Regulators, comprising senior representatives from the national public authorities competent in the field of securities in order, *inter alia*, to advise the Commission,
- (7) In its Resolution on more effective securities market regulation in the European Union, the Stockholm European Council welcomed the intention of the Commission immediately to establish a Securities Committee of high-level officials from Member States, chaired by the Commission,
- (8) The final report of the Committee of Wise Men emphasised the fact that implementing measures will be necessary for the application of directives or regulations in order to take account of new developments on financial markets,
- (9) The European Securities Committee should serve as a body for reflection, debate and advice for the Commission in the field of securities,
- (10) The European Securities Committee should adopt its own rules of procedure,
- (11) This Decision establishes the European Securities Committee in its advisory capacity. Subject to specific legislative acts proposed by the Commission and adopted by the European Parliament and the Council, the Securities Committee should also function as a regulatory committee in accordance with the 1999 Decision on comitology to assist the Commission when it takes decisions on implementing measures under Article 202 of the EC Treaty.

HAS DECIDED AS FOLLOWS:

Article 1

A committee on securities in the Community, called the “European Securities Committee” (hereinafter referred to as the “Committee”), is hereby established.

Article 2

The role of the Committee shall be to advise the Commission on policy issues as well as on draft legislative proposals the Commission might adopt in the field of securities

Article 3

The Committee shall be composed of high level representatives of Member States and be chaired by a representative of the Commission.

The chairperson of the Committee of European Securities Regulators established by Commission Decision [2001/./EC] shall participate at the meetings of the Committee as an observer.

The Committee may invite experts and observers to attend meetings.

Article 4

The Committee may set up working groups.

Article 5

The Committee shall adopt its own rules of procedure.

The secretariat of the Committee shall be provided by the Commission.

Article 6

The Committee shall take up its duties on 7 June 2001.

.

Done at Brussels,

For the Commission

Member of the Commission

LEGISLATIVE FINANCIAL STATEMENT

<p>Policy area(s): Internal Market</p>

<p>Activity(ies): Commission Decision setting up the European Securities Committee</p>

<p>TITLE OF ACTION : WORK OF THE EUROPEAN SECURITIES COMMITTEE (ESC)</p>

1. BUDGET LINE(S) + HEADING(S)

A-07032

2. OVERALL FIGURES

Implications for the Commission relate to the preparation and participation in meetings of the ESC.

2.1. Total allocation for action (Part B): • million for commitment

None.

2.2. Period of application:

The Securities Committee will start meeting soon after adoption of the Decision (June 2001). There is no limited period for action. However full and open review of the regulatory structure will occur in 2004, in accordance with the resolution of the Stockholm European Council on more effective securities market regulation in the European Union.

Overall multiannual estimate on expenditure:

a) Schedule of commitment appropriations/payment appropriations (financial intervention) (*see point 6.1.1*)

N/A

b) Technical and administrative assistance and support expenditure(*see point 6.1.2*)

N/A

c) Overall financial impact of human resources and other administrative expenditure (*see points 7.2 and 7.3*)

2.3. Compatibility with the financial programming and the financial perspective

- Proposal compatible with the existing financial programming
- This proposal will entail reprogramming of the relevant heading in the financial perspective
- This may entail application of the provisions of the Interinstitutional Agreement.

2.4. Financial impact on revenue³:

- No financial implications (involves technical aspects regarding implementation of a measure)

OR

- Financial impact – the effect on revenue is as follows:

3. BUDGET CHARACTERISTICS

N/A

4. LEGAL BASIS

Articles 49 and 56 of the EC Treaty.

5. DESCRIPTION AND GROUNDS

5.1. Need for Community intervention⁴

5.1.1. Objectives pursued

The aim of this Decision is to set up the European Securities Committee.

³For further information see a separate guidance paper

⁴For further information see a separate guidance paper

The Lisbon Council has made a strong commitment to integrate European financial markets by 2005 at the latest. A single financial market will be a key factor in promoting the competitiveness of the European economy, lowering the cost of capital for large and small companies. An integrated market, properly regulated and prudentially sound, will deliver major benefits to consumers, through higher pensions, lower mortgage costs and a wide range of financial products. And it will help to develop new economic and social cohesion throughout Europe. A vehicle to achieve this integrated market is the Financial Services Action Plan..

A Committee of Wise Men on the Regulation of European Securities Markets was set up by the Council (ECOFIN) in July 2000. In its final report, delivered in February 2001, this Committee proposed a four-level regulatory approach, with the establishment of two advisory committees, the European Securities Committee and the Committee of European Securities Regulators.

In its Stockholm Resolution on more effective securities regulation in the European Union, the European Council welcomed this report and stated that :

“Every effort should be made by all parties concerned to implement key steps for achieving an integrated securities market by the end of 2003, including notably the priorities set out in the report by the Committee of Wise Men on the Regulation of European Securities Markets, and recognising also the need for further convergence of supervisory practices and regulatory standards.

To achieve this the legislative process must be speeded up. The regulation of securities markets needs to be sufficiently flexible to be able to respond to market developments and to ensure that the European Union is competitive and can adapt to new market practices and regulatory standards, while respecting the requirements of transparency and legal certainty.

This can and must be achieved whilst fully respecting the Treaty provisions, the prerogatives of the institutions concerned and the current institutional balance.”

The European Council also welcomed the intention of the Commission immediately to establish a Securities Committee of high level officials from Member States, chaired by the Commission. According to the Stockholm Resolution,

“the Securities Committee, acting in its advisory capacity, should be consulted on policy issues, in particular, but not only, for the kind of measures the Commission might propose at level 1.

Subject to specific legislative acts proposed by the Commission and adopted by the European Parliament and the Council, the Securities Committee should also function as a regulatory committee in accordance with the 1999 Decision on comitology to assist the Commission when it takes decisions on implementing measures under Article 202 of the EC Treaty”.

The Decision establishes the European Securities Committee (ESC). The ESC comprises representatives of Member States. The Commission will chair the ESC.

The ESC will act in both advisory and regulatory capacities in the field of securities.

Acting in its **advisory** capacity, and in line with the Stockholm Council Resolution, the ESC will be consulted by the Commission on policy issues, in particular, but not only, for draft legislative proposals the Commission may propose.

Once its **regulatory** functions have been defined in legislation, the ESC will function as a regulatory committee in accordance with Council Decision 1999/468/EC to assist the Commission in the exercise of implementing powers conferred on it. The Commission may also consult the ESC before requesting advice from the Committee of European Securities Regulators on technical implementing measures.

The Commission will inform the European Parliament on a regular basis of the ESC's proceedings acting under its regulatory capacity. It will send it at the same time and on the same terms as to the

members of the ESC, the agendas for Committee meetings, the results of any votes and the summary records of meetings, as well as the list of the authorities to whom the representatives of the Member States belong.

In order to ensure an effective link between the ESC and the Committee of European Securities Regulators, the chairperson of the CESR will participate at the meetings of the ESC as an observer.

The ESC may invite experts and observers to its meetings..

The ESC will adopt rules of procedure.

The Commission will provide the secretariat of the ESC.

5.1.2. Measures taken in connection with ex ante evaluation

N/A

5.1.3. Measures taken following ex post evaluation

N/A

5.2. Actions envisaged and arrangements for budget intervention

The proposed initiative is based on the principles of subsidiarity and proportionality and will establish enhanced co-operation between the Commission and the Member States and between the Member States themselves in the securities field.

The present proposed Decision provisions set out the composition and tasks of the Committee. The Securities Committee meetings will be held in Brussels. The Commission will have to provide for the missions of its members participating in these meetings.

6. FINANCIAL IMPACT

6.1. Total financial impact on Part B - (over the entire programming period)

N/A

Calculation of costs by measure envisaged in Part B (over the entire programming period)⁵

N/A

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

Actual mobilization of the necessary administrative resources will depend on the Commission's annual decision on the allocation of resources, taking into account the number of staff and additional amounts authorized by the budgetary authority. The allocation of supplementary resources is to be considered in the context of priorities to be decided by the Commission within the limits of the budgetary means available in the annual budget.

7.1. Impact on human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources		Total	Description of tasks deriving from the action
		Number of permanent posts	Number of temporary posts		
Permanent officials or Temporary staff	A	0.5		0.5	Preparation of the Committee meetings
	B	0.3		0.3	
	C	0.3		0.3	
Other human resources					
Total		1.1		1.1	

7.2. Overall financial impact of human resources

Type of human resources	Amount •	Method of calculation*
Officials Temporary staff	118,800	108,000*1.1
Other human resources (give budget line)		
Total	118,800	

⁵ For further information see a separate guidance paper

The amounts are total expenditure for twelve months.

7.3. Other administrative expenditure deriving from the action

Budget line (number and heading)	Amount •	Method of calculation
Overall allocation (Title A7)	.	.
	.	.
	.	.
A07032 – Non-compulsory committees ⁽¹⁾	78.000	15 Member State representatives meeting 8 times a year : 650*15*8 meetings = 78.000 euros.
Information systems (A-5001/A-4300)		
Other expenditure – Part A (state which)		
Total	78.000	

The amounts are total expenditure for twelve months.

I. Annual total (7.2 + 7.3)	196.800•
II. Duration of action	indefinite
III. Total cost of action (I x II)	196.800•

8. FOLLOW-UP AND EVALUATION

There is no finite period for action.

There will be a full and open review in 2004 in accordance with the resolution of the Stockholm European Council on more effective securities market regulation in the European Union.

8.1. Follow-up arrangements

N/A

158 Study on manner of IFRS Implementation in EU...

8.2. Arrangements and schedule for the planned evaluation

N/A

9. ANTI-FRAUD MEASURES

Given the nature of the action, no specific fraud prevention measures are necessary.

Annexure 7

Official Journal of European Communities

13.7.2001 EN

L191/43

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 6 June 2001

**establishing the Committee of European Securities
Regulators**

(notified under document number C(2001) 1501)

(Text with EEA relevance)

(2001/527/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Community,

Whereas:

- (1) The freedom to provide services and the free movement of capital constitute priority objectives of the Community, as referred to in Articles 49 and 56 of the EC Treaty.
- (2) Building a genuine internal market for financial services is crucial for increasing economic growth and job creation in the Community,
- (3) The Commission Action Plan for Financial Services¹ identifies

¹ COM (1999) 232 final

a series of actions that are required in order to complete the single market for financial services.

- (4) At its meeting in Lisbon in March 2000, the European Council called for the implementation of this action plan by 2005,
- (5) On 17 July 2000 the Council set up the Committee of Wise Men on the regulation of European securities markets.
- (6) In its final report, the Committee of Wise Men called for the establishment of two committees, the European Securities Committee, comprising high-level representatives of Member States, and the Committee of European Securities Regulators, comprising senior representatives from the national public authorities competent in the field of securities in order, *inter alia*, to advise the Commission.
- (7) In its resolution on more effective securities — market regulation in the European Union, the Stockholm European Council welcomed the commission's intention formally to establish an independent regulators committee, as proposed in the report of the committee of Wise Men.
- (8) The Committee of European Securities Regulators should serve as an independent body for reflection, debate and advice for the Commission in the securities field.
- (9) The Committee of European Securities Regulators should also contribute to the consistent and timely implementation of Community legislation in the Member States by securing more effective cooperation between national supervisory authorities, carrying out peer reviews and promoting best practice⁽²⁾.
- (10) The Committee of European Securities Regulators should organise its own operational arrangements and maintain close operational links with the Commission and the European Securities Committee. It should elect its chairperson from among its members.

⁽²⁾Text taken from the third paragraph of point 6 of the Stockholm European Council resolution.

- (11) The Committee of European Securities Regulators should consult extensively and at an early stage with market participants, consumers and end-users in an open and transparent manner.
- (12) The Committee of European Securities Regulators should draw up its own rules of procedure and fully respect the prerogatives of the institutions and the institutional balance established by the Treaty⁽³⁾,

HAS DECIDED AS FOLLOWS:

Article 1

An independent advisory group on securities in the Community, called the “Committee of European Securities Regulators” (hereinafter referred to as the “Committee”), is hereby established.

Article 2

The role of the Committee shall be to advise the Commission, either at the commission’s request, within a time limit which the commission may lay down according to the urgency of the matter or on the committee’s own initiative, in particular for the preparation of draft implementing measures in the field of securities.

Article 3

The Committee shall be composed of high-level representatives from the national. Each Member State shall designate a high-level representative from its competent authority to participate in the meetings of the Committee.

The Commission shall be present at meetings of the Committee and shall designate a high-level representative to participate in all its debates.

The Committee shall elect a chairperson from among its members.

⁽³⁾Text taken from the last paragraph of the preamble to the Stockholm European Council Resolution.

The Committee may invite experts and observers to attend its meetings.

Article 4

The committee shall Maintain close operational links with the Commission and the European Securities Committee.

The Committee may set up working groups.

Article 5

Before transmitting its opinion to the Commission, the Committee shall consult extensively and at the early stage with market participants, consumers and end-users in an open and transparent manner.

Article 6

The Committee shall present an annual report to the Commission.

Article 7

The Committee shall adopt its own rules of procedure and organise its own operational arrangements.

Article 8

The Committee shall take up its duties on 7 June 2001

Done at Brussels, 6 June 2001.

For the Commission
Frederik BOLKESTEIN
Member of the Commission

Annexure 8

REGULATION (EU) No 1095/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 24 November 2010

**establishing a European Supervisory Authority
(European Securities and Markets Authority), amending
Decision No 716/2009/EC and repealing Commission
Decision 2009/77/EC**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European
Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Central Bank⁽¹⁾

Having regard to the opinion of the European Economic and Social
Committee⁽²⁾

Acting in accordance with the ordinary legislative procedure⁽³⁾

Whereas:

- (1) The financial crisis in 2007 and 2008 exposed important shortcomings in financial supervision, both in particular cases and in relation to the financial system as a whole. Nationally based supervisory models have lagged behind financial globalisation and the integrated and interconnected reality of European financial markets, in which many financial institutions operate across borders. The crisis exposed

(1) OJ C 13, 20.1.2010, p. 1.,

(2) Opinion of 22 January 2010 (not yet published in the Official Journal),

(3) Position of the European Parliament of 22 September 2010 (not yet published in the Official Journal) and decision of the Council of 17 November 2010.

shortcomings in the areas of cooperation, coordination, consistent application of Union law and trust between national supervisors.

- (2) Before and during the financial crisis, the European Parliament has called for a move towards more integrated European supervision in order to ensure a true level playing field for all actors at the level of the Union and to reflect the increasing integration of financial markets in the Union (in its resolutions of 13 April 2000 on the Commission communication on implementing the framework for financial markets: Action Plan⁽⁴⁾ of 21 November 2002 on prudential supervision rules in the European Union⁽⁵⁾ of 11 July 2007 on financial services policy (2005 to 2010) – White Paper⁽⁶⁾ of 23 September 2008 with recommendations to the Commission on hedge funds and private equity ⁽⁷⁾ and of 9 October 2008 with recommendations to the Commission on Lamfalussy follow-up: future structure of supervision ⁽⁸⁾ , and in its positions of 22 April 2009 on the amended proposal for a directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ⁽⁹⁾ and of 23 April 2009 on the proposal for a regulation of the European Parliament and of the Council on Credit Rating Agencies ⁽¹⁰⁾).
- (3) In November 2008, the Commission mandated a High Level Group chaired by Jacques de Larosière to make recommendations on how to strengthen European supervisory arrangements with a view to better protecting the citizen and rebuilding trust in the financial system. In its final report presented on 25 February 2009 (the ‘de Larosière Report’), the High-Level Group recommended that the supervisory framework be strengthened to reduce the risk and severity of future financial crises. It recommended reforms to the structure of supervision of the financial sector

(4) OJ C 40, 7.2.2001, p. 453.,

(5) OJ C 25 E, 29.1.2004, p. 394.,

(6) OJ C 175 E, 10.7.2008, p. 392.,

(7) OJ C 8 E, 14.1.2010, p. 26.

(8) OJ C 9 E, 15.1.2010, p. 48.

(9) OJ C 184 E, 8.7.2010, p. 214.

(10) OJ C 184 E, 8.7.2010, p. 292.

in the Union. The group also concluded that a European System of Financial Supervisors should be created, comprising three European Supervisory Authorities, one for the banking sector, one for the securities sector and one for the insurance and occupational pensions sector and recommended the creation of a European Systemic Risk Council. The report represented the reforms the experts considered were needed and on which work had to begin immediately.

- (4) In its Communication of 4 March 2009 entitled 'Driving European Recovery', the Commission proposed to put forward draft legislation creating a European system of financial supervision and a European systemic risk board. In its Communication of 27 May 2009 entitled 'European Financial Supervision', it provided more detail about the possible architecture of such a new supervisory framework reflecting the main thrust of the de Larosière Report.
- (5) The European Council, in its conclusions of 19 June 2009, confirmed that a European System of Financial Supervisors, comprising three new European Supervisory Authorities, should be established. The system should be aimed at upgrading the quality and consistency of national supervision, strengthening oversight of cross-border groups and establishing a European single rule book applicable to all financial market participants in the internal market. It emphasised that the European Supervisory Authorities should also have supervisory powers in relation to credit rating agencies and invited the Commission to prepare concrete proposals on how the European System of Financial Supervisors could play a strong role in crisis situations, while stressing that decisions taken by the European Supervisory Authorities should not impinge on the fiscal responsibilities of Member States. The Commission has presented a Proposal for a Regulation amending Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies⁽¹⁾. The European Parliament and the Council should consider that proposal in order to ensure that European Supervisory Authority (European Securities and Markets Authority) (hereinafter the Authority') will have adequate supervisory

powers over credit rating agencies, bearing in mind that the Authority should execute exclusive supervisory powers over Credit Rating Agencies entrusted to it in Regulation (EC) No 1060/2009. For that purpose, the Authority should have appropriate powers of investigation and enforcement as specified in the relevant legislation, as well as the possibility of charging fees.

- (6) On 17 June 2010, the European Council agreed that 'Member States should introduce systems of levies and taxes on financial institutions to ensure fair burden-sharing and to set incentives to contain systemic risk. Such levies or taxes should be part of a credible resolution framework. Further work is urgently required on their main features and issues of level playing field and cumulative impacts of various regulatory measures should be carefully assessed'.
- (7) The financial and economic crisis has created real and serious risks to the stability of the financial system and the functioning of the internal market. Restoring and maintaining a stable and reliable financial system is an absolute prerequisite to preserving trust and coherence in the internal market, and thereby to preserve and improve the conditions for the establishment of a fully integrated and functioning internal market in the field of financial services. Moreover, deeper and more integrated financial markets offer better opportunities for financing and risk diversification, and thus help to improve the capacity of the economies to absorb shocks.
- (8) The Union has reached the limits of what can be done with the present status of the Committees of European Supervisors. The Union cannot remain in a situation where there is no mechanism to ensure that national supervisors arrive at the best possible supervisory decisions for cross-border financial market participants; where there is insufficient cooperation and information exchange between national supervisors; where joint action by national authorities requires complicated arrangements to take account of the patchwork of regulatory and supervisory requirements; where national

(1) OJ L 302, 17.11.2009, p. 1.

solutions are most often the only feasible option in responding to problems at the level of the Union; and where different interpretations of the same legal text exist. The European System of Financial Supervision (hereinafter the ESFS') should be designed to overcome those deficiencies and provide a system that is in line with the objective of a stable and single Union financial market for financial services, linking national supervisors within a strong Union network.

- (9) The ESFS should be an integrated network of national and Union supervisory authorities, leaving day-to-day supervision to the national level. Greater harmonisation and the coherent application of rules for financial market participants across the Union should also be achieved. In addition to the Authority, a European Supervisory Authority (European Banking Authority) and a European Supervisory Authority (European Insurance and Occupational Pensions Authority) as well as a Joint Committee of the European Supervisory Authorities (hereinafter the Joint Committee') should be established. A European Systemic Risk Board (hereinafter the ESRB') should form part of the ESFS for the purposes of the tasks as specified in this Regulation and in Regulation (EU) No 1092/2010 of the European Parliament and of the Council⁽²⁾.
- (10) The European Supervisory Authorities (hereinafter collectively referred to as the 'ESAs') should replace the Committee of European Banking Supervisors established by Commission Decision 2009/78/EC⁽³⁾, the Committee of European Insurance and Occupational Pensions Supervisors established by Commission Decision 2009/79/EC⁽⁴⁾ and the Committee of European Securities Regulators established by Commission Decision 2009/77/EC⁽⁵⁾, and should assume all of the tasks and competences of those committees including the continuation of ongoing work and projects, where appropriate. The scope of each European Supervisory Authority's action should be clearly defined. The ESAs should be accountable to the European Parliament and the Council.

⁽²⁾ See page 1 of this Official Journal.

⁽³⁾ OJ L 25, 29.1.2009, p. 23.

⁽⁴⁾ OJ L 25, 29.1.2009, p. 28.

⁽⁵⁾ OJ L 25, 29.1.2009, p. 18.

When that accountability relates to cross-sectoral issues that have been coordinated through the Joint Committee, the ESAs should be accountable, through the Joint Committee, for such coordination.

- (11) The Authority should act with a view to improving the functioning of the internal market, in particular by ensuring a high, effective and consistent level of regulation and supervision taking account of the varying interests of all Member States and the different nature of financial market participants. The Authority should protect public values such as the integrity and stability of the financial system, the transparency of markets and financial products and the protection of investors. The Authority should also prevent regulatory arbitrage and guarantee a level playing field, and strengthen international supervisory coordination, for the benefit of the economy at large, including financial institutions and other stakeholders, consumers and employees. Its tasks should also include promoting supervisory convergence and providing advice to the Union institutions in the areas of its responsibility. The Authority should also be entrusted with certain responsibilities for existing and new financial activities.
- (12) The Authority should also be able to temporarily prohibit or restrict certain financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union in the cases specified and under the conditions laid down in the legislative acts referred to in this Regulation. If required to make such temporary prohibition in the case of an emergency situation, the Authority should do so in accordance with and under the conditions laid down in this Regulation. In cases where a temporary prohibition or restriction of certain financial activities has a cross-sectoral impact, sectoral legislation should provide that the Authority should consult and coordinate its action with, where relevant, the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority), through the Joint Committee.

- (13) The Authority should take due account of the impact of its activities on competition and innovation within the internal market, on the Union's global competitiveness, on financial inclusion, and on the Union's new strategy for jobs and growth.
- (14) In order to fulfil its objectives, the Authority should have legal personality as well as administrative and financial autonomy.
- (15) Based on the work of international bodies, systemic risk should be defined as a risk of disruption in the financial system with the potential to have serious negative consequences for the internal market and the real economy. All types of financial intermediaries, markets and infrastructures may be potentially systemically important to some degree.
- (16) Cross-border risk includes all risks caused by economic imbalances or financial failures in all or parts of the Union that have the potential to have significant negative consequences for the transactions between economic operators of two or more Member States, for the functioning of the internal market or for the public finances of the Union or any of its Member States.
- (17) The Court of Justice of the European Union in its judgment of 2 May 2006 in Case C-217/04 (United Kingdom of Great Britain and Northern Ireland v. European Parliament and Council of the European Union) held that: 'nothing in the wording of Article 95 EC [now Article 114 of the Treaty on the Functioning of the European Union (TFEU)] implies that the addressees of the measures adopted by the Community legislature on the basis of that provision can only be the individual Member States. The legislature may deem it necessary to provide for the establishment of a Community body responsible for contributing to the implementation of a process of harmonisation in situations where, in order to facilitate the uniform implementation and application of acts based on that provision, the adoption of non-binding

supporting and framework measures seems appropriate⁽¹⁾. The purpose and tasks of the Authority - assisting competent national supervisory authorities in the consistent interpretation and application of Union rules and contributing to financial stability necessary for financial integration - are closely linked to the objectives of the Union *acquis* concerning the internal market for financial services. The Authority should therefore be established on the basis of Article 114 TFEU.

- (18) The following legislative acts lay down the tasks for competent authorities of Member States, including cooperating with each other and with the Commission: Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes⁽²⁾, Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems⁽³⁾, Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities⁽⁴⁾, Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements⁽⁵⁾, Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)⁽⁶⁾, Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC⁽¹⁾, Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments⁽²⁾, Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market⁽³⁾, Directive 2006/49/EC of

(1) European Court Reports 2006 Page I-03771, para 44.

(2) OJ L 84, 26.3.1997, p. 22.

(3) OJ L 166, 11.6.1998, p. 45.

(4) OJ L 184, 6.7.2001, p. 1.

(5) OJ L 168, 27.6.2002, p. 43.

(6) OJ L 96, 12.4.2003, p. 16.

the European Parliament and the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions⁽⁴⁾ , without prejudice to the competence of the European Supervisory Authority (European Banking Authority), as far as prudential supervision is concerned, Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)⁽⁵⁾ , any future legislation in the area of Alternative Investment Fund Managers (AIFM) and Regulation (EC) No 1060/2009.

- (19) Existing Union legislation regulating the field covered by this Regulation also includes Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate⁽⁶⁾, Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group⁽⁷⁾ , Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds⁽⁸⁾, and the relevant parts of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing⁽⁹⁾ and of Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services⁽¹⁰⁾.
- (20) It is desirable that the Authority promote a consistent approach in the area of investor compensation schemes to ensure a level playing field and the equitable treatment of investors across the Union. As investor compensation schemes are subject to oversight in their Member States rather than regulatory supervision, the Authority should be

(4) OJ L 184, 6.7.2001, p. 1.

(5) OJ L 168, 27.6.2002, p. 43.

(6) OJ L 96, 12.4.2003, p. 16.

able to exercise its powers under this Regulation in relation to the investor compensation scheme itself and its operator.

- (21) In accordance with the Declaration (No 39) on Article 290 of the Treaty on the Functioning of the European Union (TFEU), annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, the elaboration of regulatory technical standards requires assistance of technical expertise in a form which is specific to the financial services area. It is necessary to allow the Authority to provide such expertise also on standards or parts of standards that are not based on a draft technical standard that it has elaborated.
- (22) There is a need to introduce an effective instrument to establish harmonised regulatory technical standards in financial services to ensure, also through a single rulebook, a level playing field and adequate protection of investors and consumers across the Union. As a body with highly specialised expertise, it is efficient and appropriate to entrust the Authority, in areas defined by Union law, with the elaboration of draft regulatory technical standards, which do not involve policy choices.
- (23) The Commission should endorse those draft regulatory technical standards by means of delegated acts under Article 290 TFEU in order to give them binding legal effect. They should be subject to amendment only in very restricted and extraordinary circumstances, since the Authority is the actor in close contact with and knowing best the daily functioning of financial markets. Draft regulatory technical standards would be subject to amendment if they were incompatible with Union law, did not respect the principle of proportionality or ran counter to the fundamental principles of the internal market for financial services as reflected in the *acquis* of Union financial services legislation. The Commission should not change the content of the draft regulatory technical standards prepared by the Authority without prior coordination with the Authority. To ensure a smooth and expeditious adoption process for those standards, the Commission's decision to endorse draft regulatory technical standards should be subject to a time limit.

- (24) Given the technical expertise of the Authority in the areas where regulatory technical standards should be developed, note should be taken of the Commission's stated intention to rely, as a rule, on the draft regulatory technical standards submitted to it by the Authority in view of the adoption of the corresponding delegated acts. However, in cases where the Authority fails to submit a draft regulatory technical standard within the time limits set out by the relevant legislative act, it should be ensured that the result of the exercise of delegated power is actually achieved, and the efficiency of the decision-making process be maintained. In those cases, the Commission should therefore be empowered to adopt regulatory technical standards in the absence of a draft by the Authority.
- (25) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts under Article 291 TFEU.
- (26) In areas not covered by regulatory or implementing technical standards, the Authority should have the power to issue guidelines and recommendations on the application of Union law. In order to ensure transparency and to strengthen compliance by national supervisory authorities with those guidelines and recommendations, it should be possible for the Authority to publish the reasons for supervisory authorities' non-compliance with those guidelines and recommendations.
- (27) Ensuring the correct and full application of Union law is a core prerequisite for the integrity, transparency, efficiency and orderly functioning of financial markets, the stability of the financial system, and for neutral conditions of competition for financial market participants in the Union. A mechanism should therefore be established whereby the Authority addresses instances of non-application or incorrect application of Union law amounting to a breach thereof. That mechanism should apply in areas where Union law defines clear and unconditional obligations.
- (28) To allow for a proportionate response to instances of incorrect or insufficient application of Union law, a three-step

mechanism should apply. First, the Authority should be empowered to investigate alleged incorrect or insufficient application of Union law obligations by national authorities in their supervisory practice, concluded by a recommendation. Second, where the competent national authority does not follow the recommendation, the Commission should be empowered to issue a formal opinion taking into account the Authority's recommendation, requiring the competent authority to take the actions necessary to ensure compliance with Union law.

- (29) Third, to overcome exceptional situations of persistent inaction by the competent authority concerned, the Authority should be empowered, as a last resort, to adopt decisions addressed to individual financial market participants. That power should be limited to exceptional circumstances in which a competent authority does not comply with the formal opinion addressed to it and in which Union law is directly applicable to financial market participants by virtue of existing or future Union regulations.
- (30) Serious threats to the orderly functioning and integrity of financial markets or the stability of the financial system in the Union require a swift and concerted response at Union level. The Authority should therefore be able to require national supervisory authorities to take specific actions to remedy an emergency situation. The power to determine the existence of an emergency situation should be conferred on the Council, following a request by any of the ESAs, the Commission or the ESRB.
- (31) The Authority should be able to require national supervisory authorities to take specific action to remedy an emergency situation. The action undertaken by the Authority in this respect should be without prejudice to the Commission's powers under Article 258 TFEU to initiate infringement proceedings against the Member State of that supervisory authority for its failure to take such action, and without prejudice to the Commission's right in such circumstances to seek interim measures in accordance with the rules of procedure of the Court of Justice of the European Union. Furthermore, it should be without prejudice to any liability

that that Member State might incur in accordance with the case law of the Court of Justice of the European Union if its supervisory authorities fail to take the action required by the Authority.

- (32) In order to ensure efficient and effective supervision and a balanced consideration of the positions of the competent authorities in different Member States, the Authority should be able to settle disagreements in cross-border situations between those competent authorities with binding effect, including within colleges of supervisors. A conciliation phase should be provided for during which the competent authorities may reach an agreement. The Authority's competence should cover disagreements on the procedure or content of an action or inaction by a competent authority of a Member State in cases specified in the legally binding Union acts referred to in this Regulation. In such a situation, one of the supervisors involved should be entitled to refer the issue to the Authority, which should act in accordance with this Regulation. The Authority should be empowered to require the competent authorities concerned to take specific action or to refrain from action in order to settle the matter in order to ensure compliance with Union law, with binding effects for the competent authorities concerned. If a competent authority does not comply with the settlement decision addressed to it, the Authority should be empowered to adopt decisions directly addressed to financial market participants in areas of Union law directly applicable to them. The power to adopt such decisions should apply only as a last resort and then only to ensure the correct and consistent application of Union law. In cases where the relevant Union legislation confers discretion on Member States' competent authorities, decisions taken by the Authority cannot replace the exercise in compliance with Union law of that discretion.
- (33) The crisis has proven that the current system of cooperation between national authorities whose powers are limited to individual Member States is insufficient as regards financial institutions that operate across borders.

- (34) Expert Groups set up by Member States to examine the causes of the crisis and make suggestions to improve the regulation and supervision of the financial sector have confirmed that the current arrangements are not a sound basis for the future regulation and supervision of cross-border financial institutions across the Union.
- (35) As the de Larosière Report indicates, 'in essence, we have two alternatives: the first "chacun pour soi" beggar-thy-neighbour solutions; or the second - enhanced, pragmatic, sensible European cooperation for the benefit of all to preserve an open world economy. This will bring undoubted economic gains'.
- (36) Colleges of supervisors play an important role in the efficient, effective and consistent supervision of financial market participants operating across borders. The Authority should contribute to promoting and monitoring the efficient, effective and consistent functioning of the colleges of supervisors and, in that respect, have a leading role in ensuring the consistent and coherent functioning of colleges of supervisors for cross-border financial institutions across the Union. The Authority should therefore have full participation rights in colleges of supervisors with a view to streamlining the functioning of and the information exchange process in the colleges of supervisors and to foster convergence and consistency across colleges in the application of Union law. As the de Larosière Report states, 'competition distortions and regulatory arbitrage stemming from different supervisory practices must be avoided, because they have the potential of undermining financial stability - inter alia by encouraging a shift of financial activity to countries with lax supervision. The supervisory system has to be perceived as fair and balanced'.
- (37) In the areas of its competence, the Authority should contribute to, and participate actively in the development and coordination of effective and consistent recovery and resolution plans, procedures in emergency situations and preventive measures to ensure the internalisation of costs by the financial system, in order to minimise the systemic impact of any failure and the reliance on taxpayer funds to

bail out financial market participants. It should contribute to developing methods for the resolution of failing key financial market participants in ways which avoid contagion, which allow them to be wound down in an orderly and timely manner, and which, where applicable, include coherent and credible funding mechanisms as appropriate.

- (38) In the current review of Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes⁽¹⁾ and Directive 97/9/EC, the Commission's intention to pay special attention to the need to ensure further harmonisation throughout the Union is noted. In the insurance sector, the Commission's intention to examine the possibility of introducing Union rules protecting insurance policy holders in case of a failing insurance company is also noted. The ESAs should play an important role in those areas and appropriate powers concerning the European guarantee scheme systems should be conferred upon them.
- (39) The delegation of tasks and responsibilities can be a useful instrument in the functioning of the network of supervisors in order to reduce the duplication of supervisory tasks, to foster cooperation and thereby streamline the supervisory process, as well as to reduce the burden imposed on financial market participants. This Regulation should therefore provide a clear legal basis for such delegation. Whilst respecting the general rule that delegation should be allowed, Member States should be able to introduce specific conditions for the delegation of responsibilities, for example regarding information about, and the notification of, delegation arrangements. Delegation of tasks means that tasks are carried out by the Authority or by a national supervisory authority other than the responsible authority, while the responsibility for supervisory decisions remains with the delegating authority. By the delegation of responsibilities, the Authority or a national supervisory authority (the delegate) should be able to decide upon a certain supervisory matter in its own name in lieu of the delegating authority. Delegations should be governed by the principle of allocating supervisory

(1) OJ L 135, 31.5.1994, p. 5.

competence to a supervisor which is best placed to take action in the subject matter. A reallocation of responsibilities would be appropriate, for example, for reasons of economies of scale or scope, of coherence in group supervision, and of optimal use of technical expertise among national supervisory authorities. Decisions by the delegate should be recognised by the delegating authority and by other competent authorities as determinative if those decisions are within the scope of the delegation. Relevant Union legislation could further specify the principles for the reallocation of responsibilities upon agreement. The Authority should facilitate and monitor delegation agreements between national supervisory authorities by all appropriate means.

It should be informed in advance of intended delegation agreements, in order to be able to express an opinion where appropriate. It should centralise the publication of such agreements to ensure timely, transparent and easily accessible information about agreements for all parties concerned. It should identify and disseminate best practices regarding delegation and delegation agreements.

- (40) The Authority should actively foster supervisory convergence across the Union with the aim of establishing a common supervisory culture.
- (41) Peer reviews are an efficient and effective tool for fostering consistency within the network of financial supervisors. The Authority should therefore develop the methodological framework for such reviews and conduct them on a regular basis. Reviews should focus not only on the convergence of supervisory practices but also on the capacity of supervisors to achieve high quality supervisory out-comes as well as on the independence of those competent authorities. The outcome of peer reviews should be made public with the agreement of the competent authority subject to the review. Best practices should also be identified and made public.
- (42) The Authority should actively promote a coordinated Union supervisory response, in particular to ensure the orderly functioning and integrity of financial markets and the stability of the financial system in the Union. In addition to its powers

for action in emergency situations, the Authority should therefore be entrusted with a general coordination function within the ESFS. The smooth flow of all relevant information between competent authorities should be a particular focus of the Authority's actions.

- (43) In order to safeguard financial stability it is necessary to identify, at an early stage, trends, potential risks and vulnerabilities stemming from the micro-prudential level, across borders and across sectors. The Authority should monitor and assess such developments in the area of its competence and, where necessary, inform the European Parliament, the Council, the Commission, the other European Supervisory Authorities and the ESRB on a regular and, as necessary, on an ad hoc basis. The Authority should also, in cooperation with the ESRB, initiate and coordinate Union-wide stress tests to assess the resilience of financial market participants to adverse market developments, and it should ensure that an as consistent as possible methodology is applied at the national level to such tests. In order to perform its functions properly, the Authority should conduct economic analyses of the markets and the impact of potential market developments.
- (44) Given the globalisation of financial services and the increased importance of international standards, the Authority should foster dialogue and cooperation with supervisors outside the Union. It should be empowered to develop contacts and enter into administrative arrangements with the supervisory authorities and administrations of third countries and with international organisations, while fully respecting the existing roles and respective competences of the Member States and the Union institutions. Participation in the work of the Authority should be open to countries which have concluded agreements with the Union whereby they have adopted and are applying Union law, and the Authority should be able to cooperate with third countries which apply legislation that has been recognised as equivalent to that of the Union.
- (45) The Authority should serve as an independent advisory body to the European Parliament, the Council, and the Commission

in the area of its competence. Without prejudice to the competencies of the competent authorities concerned, the Authority should be able to provide its opinion on the prudential assessment of mergers and acquisitions under Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments⁽¹⁾, as amended by Directive 2007/44/EC⁽²⁾ in those cases in which that Directive requires consultation between competent authorities from two or more Member States.

- (46) In order to carry out its duties effectively, the Authority should have the right to request all necessary information. To avoid the duplication of reporting obligations for financial market participants, that information should normally be provided by the national supervisory authorities which are closest to the financial markets and financial market participants and should take into account already existing statistics. However, as a last resort, the Authority should be able to address a duly justified and reasoned request for information directly to a financial market participant where a national competent authority does not or cannot provide such information in a timely fashion. Member States' authorities should be obliged to assist the Authority in enforcing such direct requests. In that context, the work on common reporting formats is essential. The measures for the collection of information should be without prejudice to the legal framework of the European Statistical System and the European System of Central Banks in the field of statistics. This Regulation should therefore be without prejudice both to Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics⁽³⁾ and to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank⁽⁴⁾.

(1) OJ L 145, 30.4.2004, p. 1.

(2) Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (OJ L 247, 21.9.2007, p. 1).

(3) OJ L 87, 31.3.2009, p. 164.

(4) OJ L 318, 27.11.1998, p. 8.

- (47) Close cooperation between the Authority and the ESRB is essential to give full effectiveness to the functioning of the ESRB and the follow-up to its warnings and recommendations. The Authority and the ESRB should share any relevant information with each other. Data related to individual undertakings should be provided only upon reasoned request. Upon receipt of warnings or recommendations addressed by the ESRB to the Authority or a national supervisory authority, the Authority should ensure follow-up as appropriate.
- (48) The Authority should consult interested parties on regulatory or implementing technical standards, guidelines and recommendations and provide them with a reasonable opportunity to comment on proposed measures. Before adopting draft regulatory or implementing technical standards, guidelines and recommendations, the Authority should carry out an impact study. For reasons of efficiency, a Securities and Markets Stakeholder Group should be used for that purpose, and should represent, in balanced proportions, financial market participants, small and medium-sized enterprises (SMEs), academics and consumers and other retail users of financial services. The Securities and Markets Stakeholder Group should work as an interface with other user groups in the financial services area established by the Commission or by Union legislation.
- (49) Members of the Securities and Markets Stakeholder Group representing non-profit organisations or academics should receive adequate compensation in order to allow persons that are neither well-funded nor industry representatives to take part fully in the debate on financial regulation.
- (50) Member States have a core responsibility for ensuring coordinated crisis management and preserving financial stability in crisis situations, in particular with regard to stabilising and resolving individual failing financial market participants. Decisions by the Authority in emergency or settlement situations affecting the stability of a financial market participant should not impinge on the fiscal responsibilities of Member States. A mechanism should be established whereby Member States may invoke this safe-

guard and ultimately bring the matter before the Council for a decision. However, that safeguard mechanism should not be abused, in particular in relation to a decision taken by the Authority which does not have a significant or material fiscal impact, such as a reduction of income linked to the temporary prohibition of specific activities or products for consumer protection purposes. When taking decisions under the safeguard mechanism, the Council should vote, in accordance with the principle where each member has one vote. It is appropriate to confer on the Council a role in this matter given the particular responsibilities of the Member States in this respect. Given the sensitivity of the issue, strict confidentiality arrangements should be ensured.

- (51) In its decision-making procedures, the Authority should be bound by Union rules and general principles on due process and transparency. The right of the addressees of the Authority's decisions to be heard should be fully respected. The Authority's acts should form an integral part of Union law.
- (52) A Board of Supervisors composed of the heads of the relevant competent authorities in each Member State, and chaired by the Chairperson of the Authority, should be the principal decision-making organ of the Authority. Representatives of the Commission, the ESRB, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Banking Authority) should participate as observers. Members of the Board of Supervisors should act independently and only in the Union's interest.
- (53) As a general rule, the Board of Supervisors should take its decisions by simple majority in accordance with the principle where each member has one vote. However, for acts of a general nature, including those relating to regulatory and implementing technical standards, guidelines and recommendations, for budgetary matters as well as in respect of requests by a Member State to reconsider a decision by the Authority to temporarily prohibit or restrict certain financial activities, it is appropriate to apply the rules of qualified majority voting as laid down in Article 16(4) of the Treaty on

European Union and in the Protocol (No 36) on transitional provisions annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union. Cases concerning the settlement of disagreements between national supervisory authorities should be examined by a restricted, objective panel, composed of members who neither are representatives of the competent authorities which are party to the disagreement nor have any interest in the conflict or direct links to the competent authorities concerned. The composition of the panel should be appropriately balanced. The decision taken by the panel should be approved by the Board of Supervisors by simple majority in accordance with the principle where each member has one vote. However, with regard to decisions taken by the consolidating supervisor, the decision proposed by the panel could be rejected by members representing a blocking minority of the votes as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions.

- (54) A Management Board, composed of the Chairperson of the Authority, of representatives of national supervisory authorities and of the Commission, should ensure that the Authority carries out its mission and performs the tasks assigned to it. The Management Board should be entrusted with the necessary powers, inter alia, to propose the annual and multi-annual work programme, to exercise certain budgetary powers, to adopt the Authority's staff policy plan, to adopt special provisions on the right to access to documents and to propose the annual report.
- (55) The Authority should be represented by a full time Chairperson, appointed by the Board of Supervisors on the basis of merit, skills, knowledge of financial institutions and markets, and of experience relevant to financial supervision and regulation, following an open selection procedure organised and managed by the Board of Supervisors assisted by the Commission. For the designation of the first Chairperson of the Authority, the Commission should, inter alia, draw up a shortlist of candidates on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation.

For the subsequent designations, the opportunity of having a shortlist drawn up by the Commission should be reviewed in a report to be established pursuant to this Regulation. Before the selected person takes up his duties, and up to 1 month after his selection by the Board of Supervisors, the European Parliament should be entitled, after having heard the person selected, to object to his designation.

- (56) The management of the Authority should be entrusted to an Executive Director, who should have the right to participate in meetings of the Board of Supervisors and the Management Board without the right to vote.
- (57) In order to ensure cross-sectoral consistency in the activities of the ESAs, they should coordinate closely through a Joint Committee and reach common positions where appropriate. The Joint Committee should coordinate the functions of the ESAs in relation to financial conglomerates and other cross sectoral matters. Where relevant, acts also falling within the area of competence of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) or the European Supervisory Authority (European Banking Authority) should be adopted in parallel by the European Supervisory Authorities concerned. The Joint Committee should be chaired for a 12-month term on a rotating basis by the Chairpersons of the ESAs. The Chairperson of the Joint Committee should be a Vice-Chair of the ESRB. The Joint Committee should have dedicated staff provided by the ESAs to allow for informal information sharing and the development of a common supervisory culture approach across the ESAs.
- (58) It is necessary to ensure that the parties affected by decisions adopted by the Authority may have recourse to the necessary remedies. To protect effectively the rights of parties, and for reasons of procedural economy, where the Authority has decision-making powers, parties should be granted a right of appeal to a Board of Appeal. For reasons of efficiency and consistency, the Board of Appeal should be a joint body of the ESAs, independent from their administrative and regulatory structures. The decisions of the Board of Appeal should be subject to appeal before the Court of Justice of the European Union.

- (59) In order to guarantee its full autonomy and independence, the Authority should be granted an autonomous budget with revenues mainly from obligatory contributions from national supervisory authorities and from the General Budget of the European Union. Union financing of the Authority is subject to an agreement by the budgetary authority in accordance with Point 47 of the Interinstitutional Agreement between the European Parliament, the Council and the Commission of 17 May 2006 on budgetary discipline and sound financial management⁽¹⁾. The Union budgetary procedure should be applicable. The auditing of accounts should be undertaken by the Court of Auditors. The overall budget is subject to the discharge procedure.
- (60) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)⁽²⁾ should apply to the Authority. The Authority should also accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF)⁽³⁾.
- (61) In order to ensure open and transparent employment conditions and equal treatment of staff, Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities⁽⁴⁾ should apply to the staff of the Authority.
- (62) It is essential that business secrets and other confidential information be protected. The confidentiality of information made available to the Authority and exchanged in the network should be subject to stringent and effective confidentiality rules.
- (63) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals

(1) OJ C 139, 14.6.2006, p. 1.

(2) OJ L 136, 31.5.1999, p. 1.

(3) OJ L 136, 31.5.1999, p. 15.

(4) OJ L 56, 4.3.1968, p. 1.

with regard to the processing of personal data and on the free movement of such data⁽⁵⁾ and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁽⁶⁾ are fully applicable to the processing of personal data for the purposes of this Regulation.

- (64) In order to ensure the transparent operation of the Authority, Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents⁽⁷⁾ should apply to the Authority.
- (65) Third countries should be allowed to participate in the work of the Authority in accordance with appropriate agreements to be concluded by the Union.
- (66) Since the objectives of this Regulation, namely improving the functioning of the internal market by means of ensuring a high, effective and consistent level of prudential regulation and supervision, protecting investors, protecting the integrity, efficiency and orderly functioning of financial markets, maintaining the stability of the financial system, and strengthening international supervisory coordination, cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (67) The Authority should assume all current tasks and powers of the Committee of European Securities Regulators. Commission Decision 2009/77/EC should therefore be

(5) OJ L 281, 23.11.1995, p. 31.

(6) OJ L 8, 12.1.2001, p. 1.

(7) OJ L 145, 31.5.2001, p. 43.

repealed on the date of the establishment of the Authority and Decision No 716/2009/EC of the European Parliament and of the Council of 16 September 2009 establishing a Community programme to support specific activities in the field of financial services, financial reporting and auditing⁽¹⁾, should be amended accordingly. Given the existing structures and operations of the Committee of European Securities Regulators, it is important to ensure very close cooperation between the Committee of European Securities Regulators and the Commission when establishing appropriate transitional arrangements, to ensure that the period during which the Commission is responsible for the administrative establishment and initial administrative operation of the Authority be as limited as possible.

- (68) It is appropriate to set a time limit for the application of this Regulation in order to ensure that the Authority is adequately prepared to begin operations and a smooth transition from the Committee of European Securities Regulators. The Authority should be appropriately financed. At least initially, it should be financed 40 % from Union funds and 60 % through contributions from Member States, made in accordance with the weighting of votes set out in Article 3(3) of the Protocol (No 36) on transitional provisions.
- (69) In order to enable the Authority to be established on 1 January 2011, this Regulation should enter into force on the day following its publication in the *Official Journal of the European Union*.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

ESTABLISHMENT AND LEGAL STATUS

Article 1

Establishment and scope of action

1. This Regulation establishes a European Supervisory Authority (European Securities and Markets Authority) (hereinafter the Authority').

⁽¹⁾ OJ L 253, 25.9.2009, p. 8.

2. The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 97/9/EC, Directive 98/26/EC, Directive 2001/34/EC, Directive 2002/47/EC, Directive 2003/6/EC, Directive 2003/71/EC, Directive 2004/39/EC, Directive 2004/109/EC, Directive 2009/65/EC and to Directive 2006/49/EC, without prejudice to the competence of the European Supervisory Authority (European Banking Authority) in terms of prudential supervision, any future legislation in the area of Alternative Investment Fund Managers (AIFM), and Regulation (EC) No 1060/2009, and, to the extent that these acts apply to firms providing investment services or to collective investment undertakings marketing their units or shares and the competent authorities that supervise them, within the relevant parts of, Directive 2002/87/EC, Directive 2005/60/EC, Directive 2002/65/EC, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority.
3. The Authority shall also act in the field of activities of market participants in relation to issues not directly covered in the acts referred to in paragraph 2, including matters of corporate governance, auditing and financial reporting, provided that such actions by the Authority are necessary to ensure the effective and consistent application of those acts. The Authority shall also take appropriate action in the context of take-over bids, clearing and settlement and derivative issues.
4. The provisions of this Regulation are without prejudice to the powers of the Commission, in particular under Article 258 TFEU, to ensure compliance with Union law.
5. The objective of the Authority shall be to protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its citizens and businesses. The Authority shall contribute to:
 - (a) improving the functioning of the internal market, including in particular a sound, effective and consistent level of regulation and supervision,

- (b) ensuring the integrity, transparency, efficiency and orderly functioning of financial markets,
- (c) strengthening international supervisory coordination,
- (d) preventing regulatory arbitrage and promoting equal conditions of competition,
- (e) ensuring the taking of investment and other risks are appropriately regulated and supervised, and
- (f) enhancing customer protection.

For those purposes, the Authority shall contribute to ensuring the consistent, efficient and effective application of the acts referred to in paragraph 2, foster supervisory convergence, provide opinions to the European Parliament, the Council, and the Commission and undertake economic analyses of the markets to promote the achievement of the Authority's objective.

In the exercise of the tasks conferred upon it by this Regulation, the Authority shall pay particular attention to any systemic risk posed by financial market participants, the failure of which may impair the operation of the financial system or the real economy.

When carrying out its tasks, the Authority shall act independently and objectively and in the interest of the Union alone.

Article 2

European System of Financial Supervision

1. The Authority shall form part of a European System of Financial Supervision (ESFS). The main objective of the ESFS shall be to ensure that the rules applicable to the financial sector are adequately implemented to preserve financial stability and to ensure confidence in the financial system as a whole and sufficient protection for the customers of financial services.

2. The ESFS shall comprise the following:
 - (a) the European Systemic Risk Board (ESRB), for the purposes of the tasks as specified in Regulation (EU) No 1092/2010⁽¹⁾ and this Regulation;
 - (b) the Authority;
 - (c) the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁽²⁾;
 - (d) the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council⁽³⁾;
 - (e) the Joint Committee of the European Supervisory Authorities ('Joint Committee') for the purposes of carrying out the tasks as specified in Articles 54 to 57 of this Regulation, of Regulation (EU) No 1093/2010 and of Regulation (EU) No 1094/2010;
 - (f) the competent or supervisory authorities in the Member States as specified in the Union acts referred to in Article 1(2) of this Regulation, of Regulation (EU) No 1093/2010 and of Regulation (EU) No 1094/2010.
3. The Authority shall cooperate regularly and closely with the ESRB as well as with the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) through the Joint Committee, ensuring cross-sectoral consistency of work and reaching joint positions in the area of supervision of financial conglomerates and on other cross-sectoral issues.
4. In accordance with the principle of sincere cooperation under Article 4(3) of the Treaty on European Union, the parties to

⁽¹⁾ See page 1 of this Official Journal.

⁽²⁾ See page 12 of this Official Journal.

⁽³⁾ See page 48 of this Official Journal.

the ESFS shall cooperate with trust and full mutual respect, in particular in ensuring the flow of appropriate and reliable information between them.

5. Those supervisory authorities that are party to the ESFS shall be obliged to supervise financial market participants operating in the Union in accordance with the acts referred to in Article 1(2).

Article 3

Accountability of the Authorities

The Authorities referred to in Article 2(2) (a) to (d) shall be accountable to the European Parliament and the Council.

Article 4

Definitions

For the purposes of this Regulation the following definitions apply:

- (1) 'financial market participant' means any person in relation to whom a requirement in the legislation referred to in Article 1(2) or a national law implementing such legislation applies;
- (2) 'key financial market participant' means a financial market participant whose regular activity or financial viability has or is likely to have a significant effect on the stability, integrity or efficiency of the financial markets in the Union;
- (3) 'competent authorities' means:
 - (i) competent authorities and/or supervisory authorities as defined in the legislation referred to in Article 1(2);
 - (ii) with regard to Directives 2002/65/EC and 2005/60/EC, the authorities competent for ensuring compliance with the requirements of those Directives by firms providing investment services and by collective investment undertakings marketing their units or shares;
 - (iii) with regard to investor compensation schemes, bodies which administer national compensation schemes

pursuant to Directive 97/9/EC, or in the case where the operation of the investor compensation scheme is administered by a private company, the public authority supervising those schemes pursuant to that Directive.

Article 5

Legal status

1. The Authority shall be a Union body with legal personality.
2. In each Member State, the Authority shall enjoy the most extensive legal capacity accorded to legal persons under national law. It may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings.
3. The Authority shall be represented by its Chairperson.

Article 6

Composition

The Authority shall comprise:

- (1) a Board of Supervisors, which shall exercise the tasks set out in Article 43;
- (2) a Management Board, which shall exercise the tasks set out in Article 47;
- (3) a Chairperson, who shall exercise the tasks set out in Article 48;
- (4) an Executive Director, who shall exercise the tasks set out in Article 53;
- (5) a Board of Appeal, which shall exercise the tasks set out in Article 60.

Article 7

Seat

The Authority shall have its seat in Paris.

CHAPTER II

TASKS AND POWERS OF THE AUTHORITY*Article 8***Tasks and powers of the Authority**

1. The Authority shall have the following tasks:
 - (a) to contribute to the establishment of high- quality common regulatory and supervisory standards and practices, in particular by providing opinions to the Union institutions and by developing guidelines, recommendations, and draft regulatory and implementing technical standards which shall be based on the legislative acts referred to in Article 1(2);
 - (b) to contribute to the consistent application of legally binding Union acts, in particular by contributing to a common supervisory culture, ensuring consistent, efficient and effective application of the acts referred to in Article 1(2), preventing regulatory arbitrage, mediating and settling disagreements between competent authorities, ensuring effective and consistent supervision of financial market participants, ensuring a coherent functioning of colleges of supervisors and taking actions, inter alia, in emergency situations;
 - (c) to stimulate and facilitate the delegation of tasks and responsibilities among competent authorities;
 - (d) to cooperate closely with the ESRB, in particular by providing the ESRB with the necessary information for the achievement of its tasks and by ensuring a proper follow up to the warnings and recommendations of the ESRB;
 - (e) to organise and conduct peer review analyses of competent authorities, including issuing guidelines and recommendations and identifying best practices, in order to strengthen consistency in supervisory outcomes;

- (f) to monitor and assess market developments in the area of its competence;
 - (g) to undertake economic analyses of markets to inform the discharge of the Authority's functions;
 - (h) to foster investor protection;
 - (i) to contribute to the consistent and coherent functioning of colleges of supervisors, the monitoring, assessment and measurement of systemic risk, the development and coordination of recovery and resolution plans, providing a high level of protection to investors throughout the Union and developing methods for the resolution of failing financial market participants and an assessment of the need for appropriate financing instruments, in accordance with Articles 21 to 26;
 - (j) to fulfil any other specific tasks set out in this Regulation or in other legislative acts;
 - (k) to publish on its website, and to update regularly, information relating to its field of activities, in particular, within the area of its competence, on registered financial market participants, in order to ensure information is easily accessible by the public;
 - (l) to take over, as appropriate, all existing and ongoing tasks from the Committee of European Securities Regulators (CESR).
2. To achieve the tasks set out in paragraph 1, the Authority shall have the powers set out in this Regulation, in particular to:
- (a) develop draft regulatory technical standards in the specific cases referred to in Article 10;
 - (b) develop draft implementing technical standards in the specific cases referred to in Article 15;
 - (c) issue guidelines and recommendations, as laid down in Article 16;

- (d) issue recommendations in specific cases, as referred to in Article 17(3);
- (e) take individual decisions addressed to competent authorities in the specific cases referred to in Articles 18(3) and 19(3);
- (f) in cases concerning directly applicable Union law, take individual decisions addressed to financial market participants, in the specific cases referred to in Article 17(6), in Article 18(4) and in Article 19(4);
- (g) issue opinions to the European Parliament, the Council, or the Commission as provided for in Article 34;
- (h) collect the necessary information concerning financial market participants as provided for in Article 35;
- (i) develop common methodologies for assessing the effect of product characteristics and distribution processes on the financial position of financial market participants and on consumer protection;
- (j) provide a centrally accessible database of registered financial market participants in the area of its competence where specified in the acts referred to in Article 1(2).

Article 9

Tasks related to consumer protection and financial activities

1. The Authority shall take a leading role in promoting transparency, simplicity and fairness in the market for consumer financial products or services across the internal market, including by:
 - (a) collecting, analysing and reporting on consumer trends;
 - (b) reviewing and coordinating financial literacy and education initiatives by the competent authorities;
 - (c) developing training standards for the industry; and

- (d) contributing to the development of common disclosure rules.
2. The Authority shall monitor new and existing financial activities and may adopt guidelines and recommendations with a view to promoting the safety and soundness of markets and convergence of regulatory practice.
 3. The Authority may also issue warnings in the event that a financial activity poses a serious threat to the objectives laid down in Article 1(5).
 4. The Authority shall establish, as an integral part of the Authority, a Committee on financial innovation, which brings together all relevant competent national supervisory authorities with a view to achieving a coordinated approach to the regulatory and supervisory treatment of new or innovative financial activities and providing advice for the Authority to present to the European Parliament, the Council and the Commission.
 5. The Authority may temporarily prohibit or restrict certain financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union in the cases specified and under the conditions laid down in the legislative acts referred to in Article 1(2) or if so required in the case of an emergency situation in accordance with and under the conditions laid down in Article 18.

The Authority shall review the decision referred to in the first sub-paragraph at appropriate intervals and at least every 3 months. If the decision is not renewed after a three-month period, it shall automatically expire.

A Member State may request the Authority to reconsider its decision. In that case, the Authority shall decide in accordance with the procedure set out in the second subparagraph of Article 44(1), whether it maintains its decision.

The Authority may also assess the need to prohibit or restrict certain types of financial activity and, where there is such a

need, inform the Commission in order to facilitate the adoption of any such prohibition or restriction.

Article 10

Regulatory technical standards

1. Where the European Parliament and the Council delegate power to the Commission to adopt regulatory technical standards by means of delegated acts under Article 290 TFEU in order to ensure consistent harmonisation in the areas specifically set out in the legislative acts referred to in Article 1(2), the Authority may develop draft regulatory technical standards. The Authority shall submit its draft standards to the Commission for endorsement.

Regulatory technical standards shall be technical, shall not imply strategic decisions or policy choices and their content shall be delimited by the legislative acts on which they are based.

Before submitting them to the Commission, the Authority shall conduct open public consultations on draft regulatory technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft regulatory technical standards concerned or in relation to the particular urgency of the matter. The Authority shall also request the opinion of the Securities and Markets Stakeholder Group referred to in Article 37.

Where the Authority submits a draft regulatory technical standard, the Commission shall immediately forward it to the European Parliament and the Council.

Within 3 months of receipt of a draft regulatory technical standard, the Commission shall decide whether to endorse it. The Commission may endorse the draft regulatory technical standards in part only, or with amendments, where the Union's interests so require.

Where the Commission intends not to endorse a draft regulatory technical standard or to endorse it in part or with

amendments, it shall send the draft regulatory technical standard back to the Authority, explaining why it does not endorse it, or, as the case may be, explaining the reasons for its amendments. Within a period of 6 weeks, the Authority may amend the draft regulatory technical standard on the basis of the Commission's proposed amendments and resubmit it in the form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council.

If, on the expiry of that six-week period, the Authority has not submitted an amended draft regulatory technical standard, or has submitted a draft regulatory technical standard that is not amended in a way consistent with the Commission's proposed amendments, the Commission may adopt the regulatory technical standard with the amendments it considers relevant, or reject it.

The Commission may not change the content of a draft regulatory technical standard prepared by the Authority without prior coordination with the Authority, as set out in this Article.

2. Where the Authority has not submitted a draft regulatory technical standard within the time limit set out in the legislative acts referred to in Article 1(2), the Commission may request such a draft within a new time limit.
3. Only where the Authority does not submit a draft regulatory technical standard to the Commission within the time limits in accordance with paragraph 2, may the Commission adopt a regulatory technical standard by means of a delegated act without a draft from the Authority.

The Commission shall conduct open public consultations on draft regulatory technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft regulatory technical standards concerned or in relation to the particular urgency of the matter. The Commission shall also request the opinion or advice of the

Securities and Markets Stakeholder Group referred to in Article 37.

The Commission shall immediately forward the draft regulatory technical standard to the European Parliament and the Council.

The Commission shall send its draft regulatory technical standard to the Authority. Within a period of 6 weeks, the Authority may amend the draft regulatory technical standard and submit it in the form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council.

If, on the expiry of the six-week period referred to in the fourth subparagraph, the Authority has not submitted an amended draft regulatory technical standard, the Commission may adopt the regulatory technical standard.

If the Authority has submitted an amended draft regulatory technical standard within the six-week period, the Commission may amend the draft regulatory technical standard on the basis of the Authority's proposed amendments or adopt the regulatory technical standard with the amendments it considers relevant. The Commission shall not change the content of the draft regulatory technical standard prepared by the Authority without prior coordination with the Authority, as set out in this Article.

4. The regulatory technical standards shall be adopted by means of regulations or decisions. They shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein.

Article 11

Exercise of the delegation

1. The power to adopt regulatory technical standards referred to in Article 10 shall be conferred on the Commission for a period of 4 years from 16 December 2010. The Commission shall draw up a report in respect of the delegated power not later than 6 months before the end of the four-year period.

The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 14.

2. As soon as it adopts a regulatory technical standard, the Commission shall notify it simultaneously to the European Parliament and to the Council.
3. The power to adopt regulatory technical standards is conferred on the Commission subject to the conditions laid down in Articles 12 to 14.

Article 12

Revocation of the delegation

1. The delegation of power referred to in Article 10 may be revoked at any time by the European Parliament or by the Council.
2. The institution which has commenced an internal procedure for deciding whether to revoke a delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated power which could be subject to revocation.
3. The decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the regulatory technical standards already in force. It shall be published in the *Official Journal of the European Union*.

Article 13

Objections to regulatory technical standards

1. The European Parliament or the Council may object to a regulatory technical standard within a period of 3 months from the date of notification of the regulatory technical standard adopted by the Commission. At the initiative of the European Parliament or the Council that period shall be extended by 3 months.

Where the Commission adopts a regulatory technical standard which is the same as the draft regulatory technical standard submitted by the Authority, the period during which the European Parliament and the Council may object shall be 1 month from the date of notification. At the initiative of the European Parliament or the Council that period shall be extended by 1 month.

2. If, on the expiry of the period referred to in paragraph 1, neither the European Parliament nor the Council has objected to the regulatory technical standard, it shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein.

The regulatory technical standard may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If either the European Parliament or the Council objects to a regulatory technical standard within the period referred to in paragraph 1, it shall not enter into force. In accordance with Article 296 TFEU, the institution which objects shall state the reasons for objecting to the regulatory technical standard.

Article 14

Non-endorsement or amendment of draft regulatory technical standards

1. In the event that the Commission does not endorse a draft regulatory technical standard or amends it as provided for in Article 10, the Commission shall inform the Authority, the European Parliament and the Council, stating its reasons.
2. Where appropriate, the European Parliament or the Council may invite the responsible Commissioner, together with the Chairperson of the Authority, within 1 month of the notice referred to in paragraph 1, for an ad hoc meeting of the competent committee of the European Parliament or the Council to present and explain their differences.

*Article 15***Implementing technical standards**

1. The Authority may develop implementing technical standards, by means of implementing acts under Article 291 TFEU, in the areas specifically set out in the legislative acts referred to in Article 1(2). Implementing technical standards shall be technical, shall not imply strategic decisions or policy choices and their content shall be to determine the conditions of application of those acts. The Authority shall submit its draft implementing technical standards to the Commission for endorsement.

Before submitting draft implementing technical standards to the Commission, the Authority shall conduct open public consultations and shall analyse the potential, related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft implementing technical standards concerned or in relation to the particular urgency of the matter. The Authority shall also request the opinion of the Securities and Markets Stakeholder Group referred to in Article 37.

Where the Authority submits a draft implementing technical standard, the Commission shall immediately forward it to the European Parliament and the Council.

Within 3 months of receipt of a draft implementing technical standard, the Commission shall decide whether to endorse it. The Commission may extend that period by 1 month. The Commission may endorse the draft implementing technical standard in part only, or with amendments, where the Union's interests so require.

Where the Commission intends not to endorse a draft implementing technical standard or intends to endorse it in part or with amendments, it shall send it back to the Authority explaining why it does not intend to endorse it, or as the case may be, explaining the reasons for its amendments. Within a period of 6 weeks, the Authority may amend the draft implementing technical standard on the basis of the Commission's proposed amendments and resubmit it in the

form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council.

If, on the expiry of the six-week period referred to in the fifth sub- paragraph, the Authority has not submitted an amended draft implementing technical standard, or has submitted a draft implementing technical standard that is not amended in a way consistent with the Commission's proposed amendments, the Commission may adopt the implementing technical standard with the amendments it considers relevant or reject it.

The Commission shall not change the content of a draft implementing technical standard prepared by the Authority without prior coordination with the Authority, as set out in this Article.

2. In cases where the Authority has not submitted a draft implementing technical standard within the time limit set out in the legislative acts referred to in Article 1(2), the Commission may request such a draft within a new time limit.
3. Only where the Authority does not submit a draft implementing technical standard to the Commission within the time limits in accordance with paragraph 2, may the Commission adopt an implementing technical standard by means of an implementing act without a draft from the Authority.

The Commission shall conduct open public consultations on draft implementing technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft implementing technical standards concerned or in relation to the particular urgency of the matter. The Commission shall also request the opinion or advice of the Securities and Markets Stakeholder Group referred to in Article 37.

The Commission shall immediately forward the draft implementing technical standard to the European Parliament and the Council.

The Commission shall send the draft implementing technical standard to the Authority. Within a period of 6 weeks, the Authority may amend the draft implementing technical standard and submit it in the form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council.

If, on the expiry of the six-week period referred to in the fourth subparagraph, the Authority has not submitted an amended draft implementing technical standard, the Commission may adopt the implementing technical standard.

If the Authority has submitted an amended draft implementing technical standard within that six-week period, the Commission may amend the draft implementing technical standard on the basis of the Authority's proposed amendments or adopt the implementing technical standard with the amendments it considers relevant.

The Commission shall not change the content of the draft implementing technical standards prepared by the Authority without prior coordination with the Authority, as set out in this Article.

4. The implementing technical standards shall be adopted by means of regulations or decisions. They shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein.

Article 16

Guidelines and recommendations

1. The Authority shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law, issue guidelines and recommendations addressed to competent authorities or financial market participants.

2. The Authority shall, where appropriate, conduct open public consultations regarding the guidelines and recommendations and analyse the related potential costs and benefits. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the guidelines or recommendations. The Authority shall, where appropriate, also request opinions or advice from the Securities and Markets Stakeholder Group referred to in Article 37.
3. The competent authorities and financial market participants shall make every effort to comply with those guidelines and recommendations.

Within 2 months of the issuance of a guideline or recommendation, each competent authority shall confirm whether it complies or intends to comply with that guideline or recommendation. In the event that a competent authority does not comply or does not intend to comply, it shall inform the Authority, stating its reasons.

The Authority shall publish the fact that a competent authority does not comply or does not intend to comply with that guideline or recommendation. The Authority may also decide, on a case by case basis, to publish the reasons provided by the competent authority for not complying with that guideline or recommendation. The competent authority shall receive advanced notice of such publication.

If required by that guideline or recommendation, financial market participants shall report, in a clear and detailed way, whether they comply with that guideline or recommendation.

4. In the report referred to in Article 43(5) the Authority shall inform the European Parliament, the Council and the Commission of the guidelines and recommendations that have been issued, stating which competent authority has not complied with them, and outlining how the Authority intends to ensure that the competent authority concerned follow its recommendations and guidelines in the future.

*Article 17***Breach of Union law**

1. Where a competent authority has not applied the acts referred to in Article 1(2), or has applied them in a way which appears to be a breach of Union law, including the regulatory technical standards and implementing technical standards established in accordance with Articles 10 to 15, in particular by failing to ensure that a financial market participant satisfies the requirements laid down in those acts, the Authority shall act in accordance with the powers set out in paragraphs 2, 3 and 6 of this Article.
2. Upon a request from one or more competent authorities, the European Parliament, the Council, the Commission or the Securities and Markets Stakeholder Group, or on its own initiative, and after having informed the competent authority concerned, the Authority may investigate the alleged breach or non-application of Union law.

Without prejudice to the powers laid down in Article 35, the competent authority shall, without delay, provide the Authority with all information which the Authority considers necessary for its investigation.

3. The Authority may, not later than 2 months from initiating its investigation, address a recommendation to the competent authority concerned setting out the action necessary to comply with Union law.

The competent authority shall, within ten working days of receipt of the recommendation, inform the Authority of the steps it has taken or intends to take to ensure compliance with Union law.

4. Where the competent authority has not complied with Union law within 1 month from receipt of the Authority's recommendation, the Commission may, after having been informed by the Authority or on its own initiative, issue a formal opinion requiring the competent authority to take the action necessary to comply with Union law. The Commission's formal opinion shall take into account the Authority's recommendation.

The Commission shall issue such a formal opinion no later than 3 months after the adoption of the recommendation. The Commission may extend this period by 1 month.

The Authority and the competent authorities shall provide the Commission with all necessary information.

5. The competent authority shall, within ten working days of receipt of the formal opinion referred to in paragraph 4, inform the Commission and the Authority of the steps it has taken or intends to take to comply with that formal opinion.
6. Without prejudice to the powers of the Commission under Article 258 TFEU, where a competent authority does not comply with the formal opinion referred to in paragraph 4 within the period of time specified therein, and where it is necessary to remedy in a timely manner such non compliance in order to maintain or restore neutral conditions of competition in the market or ensure the orderly functioning and integrity of the financial system, the Authority may, where the relevant requirements of the acts referred to in Article 1(2) are directly applicable to financial market participants, adopt an individual decision addressed to a financial market participant requiring the necessary action to comply with its obligations under Union law including the cessation of any practice.

The decision of the Authority shall be in conformity with the formal opinion issued by the Commission pursuant to paragraph 4.

7. Decisions adopted under paragraph 6 shall prevail over any previous decision adopted by the competent authorities on the same matter.

When taking action in relation to issues which are subject to a formal opinion pursuant to paragraph 4 or a decision pursuant to paragraph 6, competent authorities shall comply with the formal opinion or the decision, as the case may be.

8. In the report referred to in Article 43(5), the Authority shall set out which competent authorities and financial market

participants have not complied with the formal opinions or decisions referred to in paragraphs 4 and 6 of this Article.

Article 18

Action in emergency situations

1. In the case of adverse developments which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union, the Authority shall actively facilitate and, where deemed necessary, coordinate any actions undertaken by the relevant national competent supervisory authorities.

In order to be able to perform that facilitating and coordinating role, the Authority shall be fully informed of any relevant developments, and shall be invited to participate as an observer in any relevant gathering by the relevant national competent supervisory authorities.

2. The Council, in consultation with the Commission and the ESRB and, where appropriate, the ESAs, may adopt a decision addressed to the Authority, determining the existence of an emergency situation for the purposes of this Regulation, following a request by the Authority, the Commission or the ESRB. The Council shall review that decision at appropriate intervals and at least once a month. If the decision is not renewed at the end of a one-month period, it shall automatically expire. The Council may declare the discontinuation of the emergency situation at any time.

Where the ESRB or the Authority considers that an emergency situation may arise, it shall issue a confidential recommendation addressed to the Council and provide it with an assessment of the situation. The Council shall then assess the need for a meeting. In that process, due care of confidentiality shall be guaranteed.

If the Council determines the existence of an emergency situation, it shall duly inform the European Parliament and the Commission without delay.

3. Where the Council has adopted a decision pursuant to paragraph 2, and in exceptional circumstances where coordinated action by national authorities is necessary to respond to adverse developments which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union, the Authority may adopt individual decisions requiring competent authorities to take the necessary action in accordance with the legislation referred to in Article 1(2) to address any such developments by ensuring that financial market participants and competent authorities satisfy the requirements laid down in that legislation.
4. Without prejudice to the powers of the Commission under Article 258 TFEU, where a competent authority does not comply with the decision of the Authority referred to in paragraph 3 within the period laid down in that decision, the Authority may, where the relevant requirements laid down in the legislative acts referred to in Article 1(2) including in regulatory technical standards and implementing technical standards adopted in accordance with those acts are directly applicable to financial market participants, adopt an individual decision addressed to a financial market participant requiring the necessary action to comply with its obligations under that legislation, including the cessation of any practice. This shall apply only in situations in which a competent authority does not apply the legislative acts referred to in Article 1(2), including regulatory technical standards and implementing technical standards adopted in accordance with those acts, or applies them in a way which appears to be a manifest breach of those acts, and where urgent remedying is necessary to restore the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union.
5. Decisions adopted under paragraph 4 shall prevail over any previous decision adopted by the competent authorities on the same matter.

Any action by the competent authorities in relation to issues which are subject to a decision pursuant to paragraph 3 or 4 shall be compatible with those decisions.

*Article 19***Settlement of disagreements between competent authorities in cross-border situations**

1. Without prejudice to the powers laid down in Article 17, where a competent authority disagrees about the procedure or content of an action or inaction of a competent authority of another Member State in cases specified in the acts referred to in Article 1(2), the Authority, at the request of one or more of the competent authorities concerned may assist the authorities in reaching an agreement in accordance with the procedure set out in paragraphs 2 to 4 of this Article.

In cases specified in the legislation referred to in Article 1(2), and where on the basis of objective criteria, disagreement between competent authorities from different Member States can be determined, the Authority may, on its own initiative, assist the authorities in reaching an agreement in accordance with the procedure set out in paragraphs 2 to 4.

2. The Authority shall set a time limit for conciliation between the competent authorities taking into account any relevant time periods specified in the acts referred to in Article 1(2) and the complexity and urgency of the matter. At that stage the Authority shall act as a mediator.
3. If the competent authorities concerned fail to reach an agreement within the conciliation phase referred to in paragraph 2, the Authority may, in accordance with the procedure set out in the third and fourth subparagraph of Article 44(1) take a decision requiring them to take specific action or to refrain from action in order to settle the matter, with binding effects for the competent authorities concerned, in order to ensure compliance with Union law.
4. Without prejudice to the powers of the Commission under Article 258 TFEU, where a competent authority does not comply with the decision of the Authority, and thereby fails to ensure that a financial market participant complies with requirements directly applicable to it by virtue of the acts referred to in Article 1(2), the Authority may adopt an individual decision addressed to a financial market participant

requiring the necessary action to comply with its obligations under Union law, including the cessation of any practice.

5. Decisions adopted under paragraph 4 shall prevail over any previous decision adopted by the competent authorities on the same matter. Any action by the competent authorities in relation to facts which are subject to a decision pursuant to paragraph 3 or 4 shall be compatible with those decisions.
6. In the report referred to in Article 50(2), the Chairperson of the Authority shall set out the nature and type of disagreements between competent authorities, the agreements reached and the decisions taken to settle such disagreements.

Article 20

Settlement of disagreements between competent authorities across sectors

The Joint Committee shall, in accordance with the procedure laid down in Article 19 and Article 56, settle cross-sectoral disagreements that may arise between competent authorities as defined in Article 4(2) of this Regulation, of Regulation (EU) No 1093/2010 and of Regulation (EU) No 1094/2010 respectively.

Article 21

Colleges of supervisors

1. The Authority shall contribute to promoting and monitoring the efficient, effective and consistent functioning of the colleges of supervisors established in the legislative acts referred to in Article 1(2) and foster the coherence of the application of Union law among the colleges of supervisors. With the objective of converging supervisory best practices, staff from the Authority shall be able to participate in the activities of the colleges of supervisors, including on-site examinations, carried out jointly by two or more competent authorities.
2. The Authority shall lead in ensuring a consistent and coherent functioning of colleges of supervisors for cross-border

institutions across the Union, taking account of the systemic risk posed by financial market participants referred to in Article 23.

For the purpose of this paragraph and of paragraph 1 of this Article, the Authority shall be considered a 'competent authority' within the meaning of the relevant legislation.

The Authority may:

- (a) collect and share all relevant information in cooperation with the competent authorities in order to facilitate the work of the college and establish and manage a central system to make such information accessible to the competent authorities in the college;
- (b) initiate and coordinate Union-wide stress tests in accordance with Article 32 to assess the resilience of financial market participants, in particular the systemic risk posed by key financial market participants as referred to in Article 23, to adverse market developments, and evaluate the potential for systemic risk posed by key financial market participants to increase in situations of stress, ensuring that a consistent methodology is applied at the national level to such tests and, where appropriate, address a recommendation to the competent authority to correct issues identified in the stress test;
- (c) promote effective and efficient supervisory activities, including evaluating the risks to which financial market participants are or might be exposed in stress situations;
- (d) oversee, in accordance with the tasks and powers specified in this Regulation, the tasks carried out by the competent authorities, and
- (e) request further deliberations of a college in any cases where it considers that the decision would result in an incorrect application of Union law or would not contribute to the objective of convergence of supervisory practices. It may also require to schedule a meeting of the college or add a point to the agenda of a meeting.

3. The Authority may develop draft regulatory and implementing technical standards to ensure uniform conditions of application with respect to the provisions regarding the operational functioning of colleges of supervisors and issue guidelines and recommendations adopted under Article 16 to promote convergence in supervisory functioning and best practices adopted by the colleges of supervisors.
4. The Authority shall have a legally binding mediation role to resolve disputes between competent authorities in accordance with the procedure set out in Article 19. The Authority may take supervisory decisions directly applicable to the financial market participant concerned in accordance with Article 19.

Article 22

General provisions

1. The Authority shall duly consider systemic risk as defined by Regulation (EU) No 1092/2010. It shall address any risk of disruption in financial services that:
 - (a) is caused by an impairment of all or parts of the financial system; and
 - (b) has the potential to have serious negative consequences for internal market and the real economy.

The Authority shall consider, where appropriate, the monitoring and assessment of systemic risk as developed by the ESRB and the Authority and respond to warnings and recommendations by the ESRB in accordance with Article 17 of Regulation (EU) No 1092/2010.

2. The Authority shall, in collaboration with the ESRB, and in accordance with Article 23 develop a common approach for the identification and measurement of systemic risk posed by key financial market participants, including quantitative and qualitative indicators as appropriate.

Those indicators shall be a critical element in the determination of appropriate supervisory actions. The

Authority shall monitor the degree of convergence in the determinations made, with a view to promoting a common approach.

3. Without prejudice to the acts referred to in Article 1(2), the Authority shall draw up, as necessary, additional guidelines and recommendations for key financial market participants, to take account of the systemic risk posed by them.

The Authority shall ensure that the systemic risk posed by key financial market participants is taken into account when developing draft regulatory and implementing technical standards in the areas laid down in the legislative acts referred to in Article 1(2).

4. Upon a request from one or more competent authorities, the European Parliament, the Council or the Commission, or on its own initiative, the Authority may conduct an inquiry into a particular type of financial activity or type of product or type of conduct in order to assess potential threats to the integrity of financial markets or the stability of the financial system and make appropriate recommendations for action to the competent authorities concerned.

For those purposes, the Authority may use the powers conferred on it under this Regulation, including Article 35.

5. The Joint Committee shall ensure overall and cross-sectoral coordination of the activities carried out in accordance with this Article.

Article 23

Identification and measurement of systemic risk

1. The Authority shall, in consultation with the ESRB, develop criteria for the identification and measurement of systemic risk and an adequate stress testing regime which includes an evaluation of the potential for systemic risk posed by financial market participants to increase in situations of stress. The financial market participants that may pose a systemic risk shall be subject to strengthened supervision, and where necessary, the recovery and resolution procedures referred to in Article 25.

2. The Authority shall take fully into account the relevant international approaches when developing the criteria for the identification and measurement of systemic risk posed by financial market participants, including those established by the Financial Stability Board, the International Monetary Fund and the Bank for International Settlements.

Article 24

Permanent capacity to respond to systemic risks

1. The Authority shall ensure it has specialised and ongoing capacity to respond effectively to the materialisation of systemic risks as referred to in Articles 22 and 23, in particular with respect to institutions that pose a systemic risk.
2. The Authority shall fulfil the tasks conferred upon it in this Regulation and in the legislation referred to in Article 1(2), and shall contribute to ensuring a coherent and coordinated crisis management and resolution regime in the Union.

Article 25

Recovery and resolution procedures

1. The Authority shall contribute to and participate actively in the development and coordination of effective and consistent recovery and resolution plans, procedures in emergency situations and preventive measures to minimise the systemic impact of any failure.
2. The Authority may develop regulatory and implementing technical standards as specified in the legislative acts referred to in Article 1(2) in accordance with the procedure laid down in Articles 10 to 15.

Article 26

European system of national Investor Compensation Schemes

1. The Authority shall contribute to strengthening the European system of national Investor Compensation Schemes (ICS) by acting under the powers conferred to it in this Regulation

to ensure the correct application of Directive 97/9/EC with the aim of ensuring that national Investor Compensation Schemes are adequately funded by contributions from the concerned financial market participants, including where appropriate financial market participants headquartered in third-countries, and provide a high level of protection to all investors in a harmonised framework throughout the Union.

2. Article 16 concerning the Authority's powers to adopt guidelines and recommendations shall apply to Investor Compensation Schemes.
3. The Authority may develop regulatory and implementing technical standards as specified in the legislative acts referred to in Article 1(2) in accordance with the procedure laid down in Articles 10 to 15.
4. The review of this Regulation provided for in Article 81 shall in particular examine the convergence of the European system of national Investor Compensation Schemes.

Article 27

European system of resolution and funding arrangements

1. In the areas of its competence, the Authority shall contribute to developing methods for the resolution of failing key financial market participants in ways which avoid contagion, allow them to be wound down in an orderly and timely manner, and, where applicable, including coherent and credible funding mechanisms as appropriate.
2. The Authority shall contribute to the work on the level playing field issues and cumulative impacts of any systems of levies and contributions on financial institutions that may be introduced to ensure fair burden sharing and incentives to contain systemic risk as a part of a coherent and credible resolution framework.

The review of this Regulation provided for in Article 81 shall in particular examine the possible enhancement of the role of the Authority in a framework of crisis prevention, management and resolution.

*Article 28***Delegation of tasks and responsibilities**

1. Competent authorities may, with the consent of the delegate, delegate tasks and responsibilities to the Authority or other competent authorities subject to the conditions set out in this Article. Member States may set out specific arrangements regarding the delegation of responsibilities that have to be complied with before their competent authorities enter into such delegation agreements, and may limit the scope of delegation to what is necessary for the effective supervision of cross-border financial market participants or groups.
2. The Authority shall stimulate and facilitate the delegation of tasks and responsibilities between competent authorities by identifying those tasks and responsibilities that can be delegated or jointly exercised and by promoting best practices.
3. The delegation of responsibilities shall result in the reallocation of competences laid down in the acts referred to in Article 1(2). The law of the delegate authority shall govern the procedure, enforcement and administrative and judicial review relating to the delegated responsibilities.
4. The competent authorities shall inform the Authority of delegation agreements into which they intend to enter. They shall put the agreements into effect at the earliest 1 month after informing the Authority.

The Authority may give an opinion on the intended agreement within 1 month of being informed.

The Authority shall publish, by appropriate means, any delegation agreement as concluded by the competent authorities, in order to ensure that all parties concerned are informed appropriately.

*Article 29***Common supervisory culture**

1. The Authority shall play an active role in building a common

Union supervisory culture and consistent supervisory practices, as well as in ensuring uniform procedures and consistent approaches throughout the Union. The Authority shall carry out, at a minimum, the following activities:

- (a) providing opinions to competent authorities;
 - (b) promoting an effective bilateral and multilateral exchange of information between competent authorities, with full respect for the applicable confidentiality and data protection provisions provided for in the relevant Union legislation;
 - (c) contributing to developing high-quality and uniform supervisory standards, including reporting standards, and international accounting standards in accordance with Article 1(3);
 - (d) reviewing the application of the relevant regulatory and implementing technical standards adopted by the Commission, and of the guidelines and recommendations issued by the Authority and proposing amendments where appropriate; and
 - (e) establishing sectoral and cross-sectoral training programmes, facilitating personnel exchanges and encouraging competent authorities to intensify the use of secondment schemes and other tools.
2. The Authority may, as appropriate, develop new practical instruments and convergence tools to promote common supervisory approaches and practices.

Article 30

Peer reviews of competent authorities

1. The Authority shall periodically organise and conduct peer reviews of some or all of the activities of competent authorities, to further strengthen consistency in supervisory outcomes. To that end, the Authority shall develop methods to allow for objective assessment and comparison between the authorities reviewed. When conducting peer reviews,

existing information and evaluations already made with regard to the competent authority concerned shall be taken into account.

2. The peer review shall include an assessment of, but shall not be limited to:
 - (a) the adequacy of resources and governance arrangements of the competent authority, with particular regard to the effective application of the regulatory technical standards and implementing technical standards referred to in Articles 10 to 15 and of the acts referred to in Article 1(2) and the capacity to respond to market developments;
 - (b) the degree of convergence reached in the application of Union law and in supervisory practice, including regulatory technical standards and implementing technical standards, guidelines and recommendations adopted under Articles 10 to 16, and the extent to which the supervisory practice achieves the objectives set out in Union law;
 - (c) best practices developed by some competent authorities which might be of benefit for other competent authorities to adopt;
 - (d) the effectiveness and the degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law, including the administrative measures and sanctions imposed against persons responsible where those provisions have not been complied with.
3. On the basis of a peer review, the Authority may issue guidelines and recommendations pursuant to Article 16. In accordance with Article 16(3), the competent authorities shall endeavour to follow those guidelines and recommendations. The Authority shall take into account the outcome of the peer review when developing draft regulatory technical or implementing technical standards in accordance with Articles 10 to 15.

4. The Authority shall make the best practices that can be identified from those peer reviews publicly available. In addition, all other results of peer reviews may be disclosed publicly, subject to the agreement of the competent authority that is the subject of the peer review.

Article 31

Coordination function

The Authority shall fulfil a general coordination role between competent authorities, in particular in situations where adverse developments could potentially jeopardise the orderly functioning and integrity of financial markets or the stability of the financial system in the Union.

The Authority shall promote a coordinated Union response, inter alia, by:

- (a) facilitating the exchange of information between the competent authorities;
- (b) determining the scope and, where possible and appropriate, verifying the reliability of information that should be made available to all the competent authorities concerned;
- (c) without prejudice to Article 19, carrying out non-binding mediation upon a request from the competent authorities or on its own initiative;
- (d) notifying the ESRB of any potential emergency situations without delay.
- (e) taking all appropriate measures in case of developments which may jeopardise the functioning of the financial markets with a view to facilitating the coordination of actions undertaken by relevant competent authorities;
- (f) centralising information received from competent authorities in accordance with Articles 21 and 35 as the result of the regulatory reporting obligations for financial market participants active in more than one

Member State. The Authority shall share that information with the other competent authorities concerned.

Article 32

Assessment of market developments

1. The Authority shall monitor and assess market developments in the area of its competence and, where necessary, inform the European Supervisory Authority (European Banking Authority), and the European Supervisory Authority (European Insurance and Occupational Pensions Authority), the ESRB and the European Parliament, the Council and the Commission about the relevant micro-prudential trends, potential risks and vulnerabilities. The Authority shall include in its assessments an economic analysis of the markets in which financial market participants operate, and an assessment of the impact of potential market developments on such financial market participants.
2. The Authority shall, in cooperation with the ESRB, initiate and coordinate Union-wide assessments of the resilience of financial market participants to adverse market developments. To that end, it shall develop the following, for application by the competent authorities:
 - (a) common methodologies for assessing the effect of economic scenarios on the financial position of a financial market participant;
 - (b) common approaches to communication on the outcomes of these assessments of the resilience of financial market participants;
 - (c) common methodologies for assessing the effect of particular products or distribution processes on the financial position of a financial market participant and on investors and customer information.
3. Without prejudice to the tasks of the ESRB set out in Regulation (EU) No 1092/2010, the Authority shall, at least once a year, and more frequently as necessary, provide

assessments to the European Parliament, the Council, the Commission and the ESRB of trends, potential risks and vulnerabilities in its area of competence.

The Authority shall include a classification of the main risks and vulnerabilities in these assessments and, where necessary, recommend preventative or remedial actions.

4. The Authority shall ensure an adequate coverage of cross-sectoral developments, risks and vulnerabilities by closely cooperating with the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) through the Joint Committee.

Article 33

International relations

1. Without prejudice to the respective competences of the Member States and the Union institutions, the Authority may develop contacts and enter into administrative arrangements with supervisory authorities, international organisations and the administrations of third countries. Those arrangements shall not create legal obligations in respect of the Union and its Member States nor shall they prevent Member States and their competent authorities from concluding bilateral or multilateral arrangements with those third countries.
2. The Authority shall assist in preparing equivalence decisions pertaining to supervisory regimes in third countries in accordance with the acts referred to in Article 1(2).
3. In the report referred to in Article 43(5), the Authority shall set out the administrative arrangements agreed upon with international organisations or administrations in third countries and the assistance provided in preparing equivalence decisions.

Article 34

Other tasks

1. The Authority may, upon a request from the European Parliament, the Council or the Commission, or on its own

initiative, provide opinions to the European Parliament, the Council and the Commission on all issues related to its area of competence.

2. With regard to prudential assessments of mergers and acquisitions falling within the scope of Directive 2004/39/EC, as amended by Directive 2007/44/EC, and which according to that Directive require consultation between competent authorities from two or more Member States, the Authority may, on application of one of the competent authorities concerned, issue and publish an opinion on a prudential assessment, except in relation to the criteria in Article 10b(e) of Directive 2004/39/EC. The opinion shall be issued promptly and in any event before the end of the assessment period in accordance with Directive 2004/39/EC, as amended by Directive 2007/44/EC. Article 35 shall apply to the areas in respect of which the Authority may issue an opinion.

Article 35

Collection of information

1. At the request of the Authority, the competent authorities of the Member States shall provide the Authority with all the necessary information to carry out the duties assigned to it by this Regulation, provided that they have legal access to the relevant information, and that the request for information is necessary in relation to the nature of the duty in question.
2. The Authority may also request information to be provided at recurring intervals and in specified formats. Such requests shall, where possible, be made using common reporting formats.
3. Upon a duly justified request from a competent authority of a Member State, the Authority may provide any information that is necessary to enable the competent authority to carry out its duties, in accordance with the professional secrecy obligations laid down in sectoral legislation and in Article 70.
4. Before requesting information in accordance with this Article and in order to avoid the duplication of reporting obligations,

the Authority shall take account of any relevant existing statistics produced and disseminated by the European Statistical System and the European System of Central Banks.

5. Where information is not available or is not made available by the competent authorities in a timely fashion, the Authority may address a duly justified and reasoned request to other supervisory authorities, to the ministry responsible for finance where it has at its disposal prudential information, to the national central bank or to the statistical office of the Member State concerned.
6. Where information is not available or is not made available under paragraph 1 or 5 in a timely fashion, the Authority may address a duly justified and reasoned request directly to the relevant financial market participants. The reasoned request shall explain why the information concerning the respective individual financial market participants is necessary.

The Authority shall inform the relevant competent authorities of requests in accordance with this paragraph and with paragraph 5.

At the request of the Authority, the competent authorities shall assist the Authority in collecting the information.

7. The Authority may use confidential information received under this Article only for the purposes of carrying out the duties assigned to it by this Regulation.

Article 36

Relationship with the ESRB

1. The Authority shall cooperate closely and on a regular basis with the ESRB.
2. The Authority shall provide the ESRB with regular and timely information necessary for the achievement of its tasks. Any data necessary for the achievement of its tasks that are not in summary or aggregate form shall be provided, without delay, to the ESRB upon a reasoned request, as specified

in Article 15 of Regulation (EU) No 1092/2010. The Authority, in cooperation with the ESRB, shall have in place adequate internal procedures for the transmission of confidential information, in particular information regarding individual financial market participants.

3. The Authority shall, in accordance with paragraphs 4 and 5, ensure a proper follow-up to ESRB warnings and recommendations referred to in Article 16 of Regulation (EU) No 1092/2010.
4. On receipt of a warning or recommendation from the ESRB addressed to the Authority, the Authority shall convene a meeting of the Board of Supervisors without delay and assess the implications of such a warning or recommendation for the fulfilment of its tasks.

It shall decide, by the relevant decision-making procedure, on any actions to be taken in accordance with the powers conferred upon it by this Regulation for addressing the issues identified in the warnings and recommendations.

If the Authority does not act on a recommendation, it shall explain to the ESRB and the Council its reasons for not doing so.

5. On receipt of a warning or recommendation from the ESRB addressed to a competent national supervisory authority, the Authority shall, where relevant, use the powers conferred upon it by this Regulation to ensure a timely follow-up.

Where the addressee intends not to follow the recommendation of the ESRB, it shall inform and discuss with the Board of Supervisors its reasons for not acting.

The competent authority shall take due account of the views of the Board of Supervisors when informing the Council and the ESRB in accordance with Article 17 of Regulation (EU) No 1092/2010.

6. In discharging the tasks set out in this Regulation, the Authority shall take the utmost account of the warnings and recommendations of the ESRB.

*Article 37***Securities and Markets Stakeholder Group**

1. To help facilitate consultation with stakeholders in areas relevant to the tasks of the Authority, a Securities and Markets Stakeholder Group shall be established. The Securities and Markets Stakeholder Group shall be consulted on actions taken in accordance with Articles 10 to 15 concerning regulatory technical standards and implementing technical standards and, to the extent that these do not concern individual financial market participants, Article 16 concerning guidelines and recommendations. If actions must be taken urgently and consultation becomes impossible, the Securities and Markets Stakeholder Group shall be informed as soon as possible.

The Securities and Markets Stakeholder Group shall meet at least four times a year.

2. The Securities and Markets Stakeholder Group shall be composed of 30 members, representing in balanced proportions financial market participants operating in the Union, their employees' representatives as well as consumers, users of financial services and representatives of SMEs. At least five of its members shall be independent top-ranking academics. Ten of its members shall represent financial market participants.
3. The members of the Securities and Markets Stakeholder Group shall be appointed by the Board of Supervisors, following proposals from the relevant stakeholders. In making its decision, the Board of Supervisors shall, to the extent possible, ensure an appropriate geographical and gender balance and representation of stakeholders across the Union.
4. The Authority shall provide all necessary information, subject to professional secrecy, as set out in Article 70, and ensure adequate secretarial support for the Securities and Markets Stakeholder Group. Adequate compensation shall be provided to members of the Securities and Markets Stakeholder Group that are representing non-profit organisations, excluding industry representatives. The

Securities and Markets Stakeholder Group may establish working groups on technical issues. Members of the Securities and Markets Stakeholder Group shall serve for a period of two-and-a-half years, following which a new selection procedure shall take place.

The members of the Securities and Markets Stakeholder Group may serve two successive terms.

5. The Securities and Markets Stakeholder Group may submit opinions and advice to the Authority on any issue related to the tasks of the Authority with particular focus on the tasks set out in Articles 10 to 16 and Articles 29, 30 and 32.
6. The Securities and Markets Stakeholder Group shall adopt its rules of procedure by a majority of two-thirds of its members.
7. The Authority shall make public the opinions and advice of the Securities and Markets Stakeholder Group and the results of its consultations.

Article 38
Safeguards

1. The Authority shall ensure that no decision adopted under Articles 18 or 19 impinges in any way on the fiscal responsibilities of Member States.
2. Where a Member State considers that a decision taken under Article 19(3) impinges on its fiscal responsibilities, it may notify the Authority and the Commission within 2 weeks after notification of the Authority's decision to the competent authority that the decision will not be implemented by the competent authority.

In its notification, the Member State shall clearly and specifically explain why and how the decision impinges on its fiscal responsibilities.

In the case of such notification, the decision of the Authority shall be suspended.

Within a period of 1 month from the notification by the Member State, the Authority shall inform the Member State as to whether it maintains its decision or whether it amends or revokes it. If the decision is maintained or amended, the Authority shall state that fiscal responsibilities are not affected.

Where the Authority maintains its decision, the Council shall take a decision, by a majority of the votes cast, at one of its meetings not later than 2 months after the Authority has informed the Member State as set out in the fourth subparagraph, as to whether the Authority's decision is maintained.

Where the Council, after having considered the matter, does not take a decision to maintain the Authority's decision in accordance with the fifth subparagraph, the Authority's decision shall be terminated.

3. Where a Member State considers that a decision taken under Article 18(3) impinges on its fiscal responsibilities, it may notify the Authority, the Commission and the Council within three working days after notification of the Authority's decision to the competent authority that the decision will not be implemented by the competent authority.

In its notification, the Member State shall clearly and specifically explain why and how the decision impinges on its fiscal responsibilities.

In the event of such notification, the decision of the Authority shall be suspended.

The Council shall, within ten working days, convene a meeting and take a decision, by a simple majority of its members, as to whether the Authority's decision is revoked.

Where the Council, after having considered the matter, does not take a decision to revoke the Authority's decision in accordance with the fourth subparagraph, the suspension of the Authority's decision shall be terminated.

4. Where the Council has taken a decision in accordance with paragraph 3 not to revoke a decision of the Authority relating to Article 18(3), and the Member State concerned still considers that the decision of the Authority impinges upon its fiscal responsibilities, that Member State may notify the Commission and the Authority and request the Council to re-examine the matter. The Member State concerned shall clearly set out the reasons for its disagreement with the decision of the Council.

Within a period of 4 weeks after the notification referred to in the first subparagraph, the Council shall confirm its original decision or take a new decision in accordance with paragraph 3.

The period of 4 weeks may be extended by four additional weeks by the Council, if the particular circumstances of the case so require.

5. Any abuse of this Article, in particular in relation to a decision by the Authority which does not have a significant or material fiscal impact, shall be prohibited as incompatible with the internal market.

Article 39

Decision-making procedures

1. Before taking the decisions provided for in this Regulation, the Authority shall inform any named addressee of its intention to adopt the decision, setting a time limit within which the addressee may express its views on the matter, taking full account of the urgency, complexity and potential consequences of the matter. This applies *mutatis mutandis* to recommendations as referred to in Article 17(3).
2. The decisions of the Authority shall state the reasons on which they are based.
3. The addressees of decisions of the Authority shall be informed of the legal remedies available under this Regulation.

4. Where the Authority has taken a decision pursuant to Article 18(3) or (4), it shall review that decision at appropriate intervals.
5. The decisions which the Authority takes pursuant to Articles 17, 18 or 19 shall be made public and shall state the identity of the competent authority or financial market participant concerned and the main content of the decision, unless such publication is in conflict with the legitimate interests of financial market participants in the protection of their business secrets or could seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system of the Union.

CHAPTER III

ORGANISATION

SECTION 1

Board of Supervisors

Article 40

Composition

1. The Board of Supervisors shall be composed of:
 - (a) the Chairperson, who shall be non-voting;
 - (b) the head of the national public authority competent for the supervision of financial market participants in each Member State, who shall meet in person at least twice a year;
 - (c) one representative of the Commission, who shall be non-voting;
 - (d) one representative of the ESRB, who shall be non-voting;
 - (e) one representative of each of the other two European Supervisory Authorities who shall be non-voting;

2. The Board of Supervisors shall convene meetings with the Securities and Markets Stakeholder Group regularly, at least twice a year.
3. Each competent authority shall be responsible for nominating a high-level alternate from its authority, who may replace the member of the Board of Supervisors referred to in paragraph 1(b), where that person is prevented from attending.
4. In Member States where more than one authority is responsible for the supervision according to this Regulation, those authorities shall agree on a common representative. Nevertheless, when an item to be discussed by the Board of Supervisors does not fall within the competence of the national authority being represented by the member referred to in paragraph 1(b), that member may bring a representative from the relevant national authority, who shall be non-voting.
5. For the purpose of acting within the scope of Directive 97/9/EC, the member of the Board of Supervisors referred to in paragraph 1(b) may, where appropriate, be accompanied by a representative from the relevant bodies which administer investor compensation schemes in each Member State, who shall be non-voting.
6. The Board of Supervisors may decide to admit observers.

The Executive Director may participate in meetings of the Board of Supervisors without the right to vote.

Article 41

Internal committees and panels

1. The Board of Supervisors may establish internal committees or panels for specific tasks attributed to the Board of Supervisors, and may provide for the delegation of certain clearly defined tasks and decisions to internal committees or panels, to the Management Board or to the Chairperson.
2. For the purposes of Article 19, the Board of Supervisors shall convoke an independent panel to facilitate an impartial

settlement of the disagreement, consisting of the Chairperson and two of its members, who are not representatives of the competent authorities which are party to the disagreement and who have neither any interest in the conflict nor direct links to the competent authorities concerned.

3. Subject to Article 19(2), the panel shall propose a decision for final adoption by the Board of Supervisors, in accordance with the procedure set out in the third subparagraph of Article 44(1).
4. The Board of Supervisors shall adopt rules of procedure for the panel referred to in paragraph 2.

Article 42
Independence

When carrying out the tasks conferred upon it by this Regulation, the Chairperson and the voting members of the Board of Supervisors shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from Union institutions or bodies, from any government of a Member State or from any other public or private body.

Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the members of the Board of Supervisors in the performance of their tasks.

Article 43
Tasks

1. The Board of Supervisors shall give guidance to the work of the Authority and shall be in charge of taking the decisions referred to in Chapter II.
2. The Board of Supervisors shall adopt the opinions, recommendations, and decisions, and issue the advice referred to in Chapter II.
3. The Board of Supervisors shall appoint the Chairperson.
4. The Board of Supervisors shall adopt, before 30 September of each year, on the basis of a proposal by the Management

Board, the work programme of the Authority for the coming year, and shall transmit it for information to the European Parliament, the Council and the Commission.

The work programme shall be adopted without prejudice to the annual budgetary procedure and shall be made public.

5. The Board of Supervisors shall, on the basis of a proposal by the Management Board, adopt the annual report on the activities of the Authority, including on the performance of the Chairperson's duties, on the basis of the draft report referred to in Article 53(7) and shall transmit that report to the European Parliament, the Council, the Commission, the Court of Auditors and the European Economic and Social Committee by 15 June each year. The report shall be made public.
6. The Board of Supervisors shall adopt the multi-annual work programme of the Authority, and shall transmit it for information to the European Parliament, the Council and the Commission.

The multi-annual work programme shall be adopted without prejudice to the annual budgetary procedure and shall be made public.

7. The Board of Supervisors shall adopt the budget in accordance with Article 63.
8. The Board of Supervisors shall exercise disciplinary authority over the Chairperson and the Executive Director and may remove them from office in accordance with Article 48(5) or Article 51(5) respectively.

Article 44

Decision making

1. Decisions of the Board of Supervisors shall be taken by a simple majority of its members. Each member shall have one vote.

With regard to the acts specified in Articles 10 to 16 and measures and decisions adopted under the third subparagraph of Article 9(5) and Chapter VI and by way of derogation from the first subparagraph of this paragraph, the Board of Supervisors shall take decisions on the basis of a qualified majority of its members, as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions.

With regard to decisions in accordance with Article 19(3), for decisions taken by the consolidating supervisor, the decision proposed by the panel shall be considered as adopted, if approved by a simple majority, unless it is rejected by members representing a blocking minority of the votes as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions.

For all other decisions in accordance with Article 19(3), the decision proposed by the panel shall be adopted by a simple majority of the members of the Board of Supervisors. Each member shall have one vote.

2. Meetings of the Board of Supervisors shall be convened by the Chairperson at his own initiative or at the request of one third of its members, and shall be chaired by the Chairperson.
3. The Board of Supervisors shall adopt and make public its rules of procedure.
4. The rules of procedure shall set out in detail the arrangements governing voting, including, where appropriate, the rules governing quorums. The non-voting members and the observers, with the exception of the Chairperson and the Executive Director, shall not attend any discussions within the Board of Supervisors relating to individual financial market participants, unless otherwise provided for in Article 75(3) or in the acts referred to in Article 1(2).

SECTION 2
Management Board

Article 45
Composition

1. The Management Board shall be composed of the Chairperson and six other members of the Board of Supervisors, elected by and from the voting members of the Board of Supervisors.

Other than the Chairperson, each member of the Management Board shall have an alternate, who may replace him if he is prevented from attending.

The term of office of the members elected by the Board of Supervisors shall be two-and-a-half years. That term may be extended once. The composition of the Management Board shall be balanced and proportionate and shall reflect the Union as a whole. Mandates shall be overlapping and an appropriate rotating arrangement shall apply.

2. Decisions by the Management Board shall be adopted on the basis of a majority of the members present. Each member shall have one vote.

The Executive Director and a representative of the Commission shall participate in meetings of the Management Board without the right to vote.

The representative of the Commission shall have the right to vote on matters referred to in Article 63.

The Management Board shall adopt and make public its rules of procedure.

3. Meetings of the Management Board shall be convened by the Chairperson at his own initiative or at the request of at least a third of its members, and shall be chaired by the Chairperson.

The Management Board shall meet prior to every meeting of the Board of Supervisors and as often as the Management

Board deems necessary. It shall meet at least five times a year.

4. The members of the Management Board may, subject to the rules of procedure, be assisted by advisers or experts. The non-voting members, with the exception of the Executive Director, shall not attend any discussions within the Management Board relating to individual financial market participants.

Article 46

Independence

The members of the Management Board shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State or from any other public or private body.

Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the members of the Management Board in the performance of their tasks.

Article 47

Tasks

1. The Management Board shall ensure that the Authority carries out its mission and performs the tasks assigned to it in accordance with this Regulation.
2. The Management Board shall propose, for adoption by the Board of Supervisors, an annual and multi-annual work programme.
3. The Management Board shall exercise its budgetary powers in accordance with Articles 63 and 64.
4. The Management Board shall adopt the Authority's staff policy plan and, pursuant to Article 68(2), the necessary implementing measures of the Staff Regulations of Officials of the European Communities (hereinafter the Staff Regulations').

5. The Management Board shall adopt the special provisions on right of access to the documents of the Authority, in accordance with Article 72.
6. The Management Board shall propose an annual report on the activities of the Authority, including on the Chairperson's duties, on the basis of the draft report referred to in Article 53(7) to the Board of Supervisors for approval.
7. The Management Board shall adopt and make public its rules of procedure.
8. The Management Board shall appoint and remove the members of the Board of Appeal in accordance with Article 58(3) and (5).

SECTION 3
Chairperson

Article 48
Appointment and tasks

1. The Authority shall be represented by a Chairperson, who shall be a full-time independent professional.

The Chairperson shall be responsible for preparing the work of the Board of Supervisors and shall chair the meetings of the Board of Supervisors and the Management Board.

2. The Chairperson shall be appointed by the Board of Supervisors on the basis of merit, skills, knowledge of financial market participants and markets, and of experience relevant to financial supervision and regulation, following an open selection procedure.

Before taking up his duties, and up to 1 month after the selection by the Board of Supervisors, the European Parliament may, after having heard the candidate selected by the Board of Supervisors, object to the designation of the selected person.

The Board of Supervisors shall also elect, from among its members, an alternate who shall carry out the functions of

the Chairperson in his absence. That alternate shall not be elected from among the members of the Management Board.

3. The Chairperson's term of office shall be 5 years and may be extended once.
4. In the course of the 9 months preceding the end of the five year term of office of the Chairperson, the Board of Supervisors shall evaluate:
 - (a) the results achieved in the first term of office and the way they were achieved;
 - (b) the Authority's duties and requirements in the coming years.

The Board of Supervisors, taking into account the evaluation may extend the term of office of the Chairperson once subject to confirmation by the European Parliament.

5. The Chairperson may be removed from office only by the European Parliament following a decision of the Board of Supervisors.

The Chairperson shall not prevent the Board of Supervisors from discussing matters relating to the Chairperson, in particular the need for his removal, and shall not be involved in deliberations concerning such a matter.

Article 49 **Independence**

Without prejudice to the role of the Board of Supervisors in relation to the tasks of the Chairperson, the Chairperson shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State or from any other public or private body.

Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the Chairperson in the performance of his tasks.

In accordance with the Staff Regulations referred to in Article 68, the Chairperson shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

Article 50
Report

1. The European Parliament and the Council may invite the Chairperson or his alternate to make a statement, while fully respecting his independence. The Chairperson shall, make a statement before the European Parliament and answer any questions put by its members, whenever so requested.
2. The Chairperson shall report in writing on the main activities of the Authority to the European Parliament when requested and at least 15 days before making the statement referred to in paragraph 1.
3. In addition to the information referred to in Articles 11 to 18 and Articles 20 and 33, the report shall also include any relevant information requested by the European Parliament on an ad-hoc basis.

SECTION 4
Executive Director

Article 51
Appointment

1. The Authority shall be managed by an Executive Director, who shall be a full-time independent professional.
2. The Executive Director shall be appointed by the Board of Supervisors, after confirmation by the European Parliament, on the basis of merit, skills, knowledge of financial market participants and markets, and experience relevant to financial supervision and regulation and managerial experience, following an open selection procedure.
3. The Executive Director's term of office shall be 5 years and may be extended once.

4. In the course of the 9 months preceding the end of the Executive Director's term of office, the Board of Supervisors shall evaluate in particular:
 - (a) the results achieved in the first term of office and the way they were achieved;
 - (b) the Authority's duties and requirements in the coming years.

The Board of Supervisors, taking into account the evaluation referred to in the first subparagraph, may extend the term of office of the Executive Director once.

5. The Executive Director may be removed from office only upon a decision of the Board of Supervisors.

Article 52
Independence

Without prejudice to the respective roles of the Management Board and the Board of Supervisors in relation to the tasks of the Executive Director, the Executive Director shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State or from any other public or private body.

Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the Executive Director in the performance of his tasks.

In accordance with the Staff Regulations referred to in Article 68, the Executive Director shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

Article 53
Tasks

1. The Executive Director shall be in charge of the management of the Authority and shall prepare the work of the Management Board.

2. The Executive Director shall be responsible for implementing the annual work programme of the Authority under the guidance of the Board of Supervisors and under the control of the Management Board.
3. The Executive Director shall take the necessary measures, notably the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Authority, in accordance with this Regulation.
4. The Executive Director shall prepare a multi-annual work programme, as referred to in Article 47(2).
5. Each year by 30 June, the Executive Director shall prepare a work programme for the following year, as referred to in Article 47(2).
6. The Executive Director shall draw up a preliminary draft budget of the Authority pursuant to Article 63 and shall implement the budget of the Authority pursuant to Article 64.
7. Each year the Executive Director shall prepare a draft report with a section on the regulatory and supervisory activities of the Authority and a section on financial and administrative matters.
8. The Executive Director shall exercise in respect to the Authority's staff the powers laid down in Article 68 and manage staff matters.

CHAPTER IV

JOINT BODIES OF THE EUROPEAN SUPERVISORY AUTHORITIES

SECTION 1

Joint Committee of European Supervisory Authorities

Article 54

Establishment

1. The Joint Committee of the European Supervisory Authorities is hereby established.

2. The Joint Committee shall serve as a forum in which the Authority shall cooperate regularly and closely and ensure cross-sectoral consistency with the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority), in particular regarding:
 - financial conglomerates,
 - accounting and auditing,
 - micro-prudential analyses of cross-sectoral developments, risks and vulnerabilities for financial stability,
 - retail investment products,
 - measures combating money laundering; and,
 - information exchange with the ESRB and developing the relationship between the ESRB and the ESAs,
3. The Joint Committee shall have a dedicated staff provided by the ESAs that shall act as a secretariat. The Authority shall contribute adequate resources to administrative, infrastructure and operational expenses.
4. In the event that a financial market participant reaches across different sectors, the Joint Committee shall resolve disagreements in accordance with Article 56.

Article 55

Composition

1. The Joint Committee shall be composed of the Chairpersons of the ESAs, and, where applicable, the Chairperson of any Sub-Committee established under Article 57.
2. The Executive Director, a representative of the Commission and the ESRB shall be invited to the meetings of the Joint Committee, as well as of any Sub-Committees referred to in Article 57, as observers.

3. The Chairperson of the Joint Committee shall be appointed on an annual rotational basis from among the Chairpersons of the ESAs. The Chairperson of the Joint Committee shall be a Vice-Chair of the ESRB.
4. The Joint Committee shall adopt and publish its own rules of procedure. The rules may specify further participants in the meetings of the Joint Committee.

The Joint Committee shall meet at least once every 2 months.

Article 56

Joint positions and common acts

Within the scope of its tasks in Chapter II, and, in particular with respect to the implementation of Directive 2002/87/EC, where relevant, the Authority shall reach joint positions with the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and with the European Supervisory Authority (European Banking Authority), as appropriate.

Acts under Articles 10 to 15, 17, 18 or 19 of this Regulation in relation to the application of Directive 2002/87/EC and of any other Union acts referred to in Article 1(2) that also fall within the area of competence of the European Supervisory Authority (European Banking Authority) or the European Supervisory Authority (European Insurance and Occupational Pensions Authority) shall be adopted, in parallel, by the Authority, the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority), as appropriate.

Article 57

Sub-Committees

1. For the purposes of Article 56, a Sub-Committee on Financial Conglomerates to the Joint Committee shall be established.
2. The Sub-Committee shall be composed of the individuals referred to in Article 55(1), and one high-level representative from the current staff of the relevant competent authority from each Member State.

3. The Sub-Committee shall elect a Chairperson from among its members, who shall also be a member of the Joint Committee.
4. The Joint Committee may establish further Sub Committees.

SECTION 2
Board of Appeal

Article 58
Composition and operation

1. The Board of Appeal shall be a joint body of the ESAs.
2. The Board of Appeal shall be composed of six members and six alternates, who shall be individuals of a high repute with a proven record of relevant knowledge and professional experience, including supervisory, experience to a sufficiently high level in the fields of banking, insurance, occupational pensions, securities markets or other financial services, excluding current staff of the competent authorities or other national or Union institutions involved in the activities of the Authority. The Board of Appeal shall have sufficient legal expertise to provide expert legal advice on the legality of the Authority's exercise of its powers.

The Board of Appeal shall designate its President.

3. Two members of the Board of Appeal and two alternates shall be appointed by the Management Board of the Authority from a short-list proposed by the Commission, following a public call for expressions of interest published in the *Official Journal of the European Union*, and after consultation of the Board of Supervisors.

The other members shall be appointed in accordance with Regulation (EU) No 1093/2010 and Regulation (EU) No 1094/2010.

4. The term of office of the members of the Board of Appeal shall be 5 years. That term may be extended once.

5. A member of the Board of Appeal appointed by the Management Board of the Authority shall not be removed during his term of office, unless he has been found guilty of serious misconduct and the Management Board takes a decision to that effect after consulting the Board of Supervisors.
6. The decisions of the Board of Appeal shall be adopted on the basis of a majority of at least four of its six members. Where the appealed decision falls within the scope of this Regulation, the deciding majority shall include at least one of the two members of the Board of Appeal appointed by the Authority.
7. The Board of Appeal shall be convened by its President when necessary.
8. The ESAs shall ensure adequate operational and secretarial support for the Board of Appeal through the Joint Committee.

Article 59

Independence and impartiality

1. The members of the Board of Appeal shall be independent in making their decisions. They shall not be bound by any instructions. They shall not perform any other duties in relation to the Authority, its Management Board or its Board of Supervisors.
2. Members of the Board of Appeal shall not take part in any appeal proceedings in which they have any personal interest, if they have previously been involved as representatives of one of the parties to the proceedings, or if they have participated in the decision under appeal.
3. If, for one of the reasons referred to in paragraphs 1 and 2 or for any other reason, a member of a Board of Appeal considers that another member should not take part in any appeal proceedings, he shall inform the Board of Appeal accordingly.

4. Any party to the appeal proceedings may object to the participation of a member of the Board of Appeal on any of the grounds referred to in paragraphs 1 and 2, or if suspected of bias.

No objection may be based on the nationality of members nor shall it be admissible if, while being aware of a reason for objecting, the party to the appeal proceedings has nonetheless taken a procedural step other than objecting to the composition of the Board of Appeal.

5. The Board of Appeal shall decide on the action to be taken in the cases specified in paragraphs 1 and 2 without the participation of the member concerned.

For the purpose of taking that decision, the member concerned shall be replaced on the Board of Appeal by his alternate. Where the alternate is in a similar situation, the Chairperson shall designate a replacement from among the available alternates.

6. The members of the Board of Appeal shall undertake to act independently and in the public interest.

For that purpose, they shall make a declaration of commitments and a declaration of interests indicating either the absence of any interest which may be considered prejudicial to their independence or any direct or indirect interest which might be considered prejudicial to their independence.

Those declarations shall be made public, annually and in writing.

CHAPTER V REMEDIES

Article 60 **Appeals**

1. Any natural or legal person, including competent authorities, may appeal against a decision of the Authority referred to in

Articles 17, 18 and 19 and any other decision taken by the Authority in accordance with the Union acts referred to in Article 1(2) which is addressed to that person, or against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to that person.

2. The appeal, together with a statement of grounds, shall be filed in writing at the Authority within 2 months of the date of notification of the decision to the person concerned, or, in the absence of a notification, of the day on which the Authority published its decision.

The Board of Appeal shall decide upon the appeal within 2 months after the appeal has been lodged.

3. An appeal lodged pursuant to paragraph 1 shall not have suspensive effect.

However, the Board of Appeal may, if it considers that circumstances so require, suspend the application of the contested decision.

4. If the appeal is admissible, the Board of Appeal shall examine whether it is well-founded. It shall invite the parties to the appeal proceedings to file observations on its own notifications or on communications from the other parties to the appeal proceedings, within specified time limits. Parties to the appeal proceedings shall be entitled to make oral representations.
5. The Board of Appeal may confirm the decision taken by the competent body of the Authority, or remit the case to the competent body of the Authority. That body shall be bound by the decision of the Board of Appeal and that body shall adopt an amended decision regarding the case concerned.
6. The Board of Appeal shall adopt and make public its rules of procedure.
7. The decisions taken by the Board of Appeal shall be reasoned and shall be made public by the Authority.

*Article 61***Actions before the Court of Justice of the European Union**

1. Proceedings may be brought before the Court of Justice of the European Union, in accordance with Article 263 TFEU, contesting a decision taken by the Board of Appeal or, in cases where there is no right of appeal before the Board of Appeal, by the Authority.
2. Member States and the Union institutions, as well as any natural or legal person, may institute proceedings before the Court of Justice of the European Union against decisions of the Authority, in accordance with Article 263 TFEU.
3. In the event that the Authority has an obligation to act and fails to take a decision, proceedings for failure to act may be brought before the Court of Justice of the European Union in accordance with Article 265 TFEU.
4. The Authority shall be required to take the necessary measures to comply with the judgment of the Court of Justice of the European Union.

CHAPTER VI

FINANCIAL PROVISIONS*Article 62***Budget of the Authority**

1. The revenues of the Authority, a European body in accordance with Article 185 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾ (hereinafter the 'Financial Regulation'), shall consist, in particular, of any combination of the following:
 - (a) obligatory contributions from the national public authorities competent for the supervision of financial market participants which shall be made in accordance with a formula based on the weighting of votes set out in Article 3(3) of Protocol (No 36) on transitional

(1) OJ L 248, 16.9.2002, p. 1.

provisions. For the purposes of this Article, Article 3(3) of Protocol (No 36) on transitional provisions shall continue to apply beyond the deadline of 31 October 2014 therein established;

- (b) a subsidy from the Union, entered in the General Budget of the European Union (Commission Section);
 - (c) any fees paid to the Authority in the cases specified in the relevant instruments of Union law.
2. The expenditure of the Authority shall include, at least, staff, remuneration, administrative, infrastructure professional training and operational expenses.
 3. Revenue and expenditure shall be in balance.
 4. Estimates of all Authority revenue and expenditure shall be prepared for each financial year, corresponding to the calendar year, and shall be presented in the budget of the Authority.

Article 63

Establishment of the budget

1. By 15 February each year, the Executive Director shall draw up a draft statement of estimates of revenue and expenditure for the following financial year, and shall forward it to the Management Board and the Board of Supervisors, together with the establishment plan. Each year, the Board of Supervisors shall, on the basis of the draft statement drawn up by the Executive Director and approved by the Management Board, produce a statement of estimates of revenue and expenditure of the Authority for the following financial year. That statement of estimates, including a draft establishment plan, shall be transmitted by the Board of Supervisors to the Commission by 31 March. Prior to adoption of the statement of estimates, the draft prepared by the Executive Director shall be approved by the Management Board.
2. The statement of estimates shall be transmitted by the Commission to the European Parliament and to the Council

(hereinafter referred to together as the 'budgetary authority'), together with the draft budget of the European Union.

3. On the basis of the statement of estimates, the Commission shall enter in the draft budget of the European Union the estimates it deems necessary in respect of the establishment plan and the amount of the subsidy to be charged to the General Budget of the European Union in accordance with Articles 313 and 314 TFEU.
4. The budgetary authority shall adopt the establishment plan for the Authority. The budgetary authority shall authorise the appropriations for the subsidy to the Authority.
5. The budget of the Authority shall be adopted by the Board of Supervisors. It shall become final after the final adoption of the General Budget of the European Union. Where necessary, it shall be adjusted accordingly.
6. The Management Board shall, without delay, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of its budget, in particular any project relating to property, such as the rental or purchase of buildings. It shall inform the Commission thereof. If either branch of the budgetary authority intends to issue an opinion, it shall, within 2 weeks of receipt of the information on the project, notify the Authority of its intention to issue such an opinion. In the absence of a reply, the Authority may proceed with the planned operation.
7. For the first year of operation of the Authority, ending on 31 December 2011, the financing of the Authority by the Union is subject to an agreement by the budgetary authority as provided for in Point 47 of the Interinstitutional Agreement on budgetary discipline and sound financial management.

Article 64

Implementation and control of the budget

1. The Executive Director shall act as authorising officer and shall implement the Authority's budget.

2. By 1 March following the completion of each financial year, the Authority's accounting officer shall forward to the Commission's accounting officer and to the Court of Auditors the provisional accounts, accompanied by the report on budgetary and financial management during the financial year. The Authority's accounting officer shall also send the report on budgetary and financial management to the members of the Board of Supervisors, the European Parliament and the Council by 31 March of the following year.

The Commission's accounting officer shall then consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of the Financial Regulation.

3. After receiving the observations of the Court of Auditors on the provisional accounts of the Authority in accordance with Article 129 of the Financial Regulation, the Executive Director, acting on his own responsibility, shall draw up the final accounts of the Authority and transmit them, for opinion, to the Management Board.
4. The Management Board shall deliver an opinion on the final accounts of the Authority.
5. The Executive Director shall transmit those final accounts, accompanied by the opinion of the Management Board, by 1 July following the completion of the financial year, to the Members of the Board of Supervisors, the European Parliament, the Council, the Commission and the Court of Auditors.
6. The final accounts shall be published.
7. The Executive Director shall send the Court of Auditors a reply to the latter's observations by 30 September. He shall also send a copy of that reply to the Management Board and the Commission.
8. The Executive Director shall submit to the European Parliament, at the latter's request and as provided for in Article 146(3) of the Financial Regulation, any information

necessary for the smooth application of the discharge procedure for the financial year in question.

9. The European Parliament, following a recommendation from the Council acting by qualified majority, shall, before 15 May of the year N + 2, grant a discharge to the Authority for the implementation of the budget comprising revenue from the General Budget of the European Union and competent authorities for the financial year N.

Article 65

Financial rules

The financial rules applicable to the Authority shall be adopted by the Management Board after consulting the Commission. Those rules may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities⁽¹⁾ unless the specific operational needs for the functioning of the Authority so require and only with the prior agreement of the Commission.

Article 66

Anti-fraud measures

1. For the purposes of combating fraud, corruption and any other illegal activity, Regulation (EC) No 1073/1999 shall apply to the Authority without any restriction.
2. The Authority shall accede to the Interinstitutional Agreement concerning internal investigations by OLAF and shall immediately adopt appropriate provisions for all staff of the Authority.
3. The funding decisions and the agreements and the implementing instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may, if need be, carry out on-the-spot checks on the beneficiaries of

(1) OJ L 357, 31.12.2002, p. 72.

monies disbursed by the Authority as well as on the staff responsible for allocating these monies.

CHAPTER VII GENERAL PROVISIONS

Article 67

Privileges and immunities

The Protocol (No 7) on the privileges and immunities of the European Union annexed to the Treaty on European Union and to the TFEU shall apply to the Authority and its staff.

Article 68

Staff

1. The Staff Regulations, the Conditions of Employment of Other Servants and the rules adopted jointly by the Union institutions for the purpose of applying them shall apply to the staff of the Authority, including its Executive Director and its Chairperson.
2. The Management Board, in agreement with the Commission, shall adopt the necessary implementing measures, in accordance with the arrangements provided for in Article 110 of the Staff Regulations.
3. In respect of its staff, the Authority shall exercise the powers conferred on the appointing authority by the Staff Regulations and on the authority entitled to conclude contracts by the Conditions of Employment of Other Servants.
4. The Management Board shall adopt provisions to allow national experts from Member States to be seconded to the Authority.

Article 69

Liability of the Authority

1. In the case of non-contractual liability, the Authority shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it

or by its staff in the performance of their duties. The Court of Justice of the European Union shall have jurisdiction in any dispute over the remedying of such damage.²

2. The personal financial liability and disciplinary liability of Authority staff towards the Authority shall be governed by the relevant provisions applying to the staff of the Authority.

Article 70

Obligation of professional secrecy

1. Members of the Board of Supervisors and the Management Board, the Executive Director, and members of the staff of the Authority including officials seconded by Member States on a temporary basis and all other persons carrying out tasks for the Authority on a contractual basis shall be subject to the requirements of professional secrecy pursuant to Article 339 TFEU and the relevant provisions in Union legislation, even after their duties have ceased.

Article 16 of the Staff Regulations shall apply to them.

In accordance with the Staff Regulations, the staff shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence staff members of the Authority in the performance of their tasks.

2. Without prejudice to cases covered by criminal law, any confidential information received by persons referred to in paragraph 1 whilst performing their duties may not be divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual financial market participants cannot be identified.

Moreover, the obligation under paragraph 1 and the first subparagraph of this paragraph shall not prevent the Authority and the national supervisory authorities from using the information for the enforcement of the acts referred to in

Article 1(2), and in particular for legal procedures for the adoption of decisions.

3. Paragraphs 1 and 2 shall not prevent the Authority from exchanging information with national supervisory authorities in accordance with this Regulation and other Union legislation applicable to financial market participants.

That information shall be subject to the conditions of professional secrecy referred to in paragraphs 1 and 2. The Authority shall lay down in its internal rules of procedure the practical arrangements for implementing the confidentiality rules referred to in paragraphs 1 and 2.

4. The Authority shall apply Commission Decision 2001/844/EC/ECSC, Euratom of 29 November 2001 amending its internal Rules of Procedure⁽¹⁾

Article 71

Data protection

This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Directive 95/46/EC or the obligations of the Authority relating to its processing of personal data under Regulation (EC) No 45/2001 when fulfilling its responsibilities.

Article 72

Access to documents

1. Regulation (EC) No 1049/2001 shall apply to documents held by the Authority.
2. The Management Board shall, by 31 May 2011, adopt practical measures for applying Regulation (EC) No 1049/2001.
3. Decisions taken by the Authority pursuant to Article 8 of Regulation (EC) No 1049/2001 may be the subject of a complaint to the Ombudsman or of proceedings before the Court of Justice of the European Union, following an appeal

1. OJ L 317, 3.12.2001, p. 1.

to the Board of Appeal, as appropriate, in accordance with the conditions laid down in Articles 228 and 263 TFEU respectively.

Article 73

Language arrangements

1. Council Regulation No 1 determining the languages to be used by the European Economic Community⁽¹⁾ shall apply to the Authority.
2. The Management Board shall decide on the internal language arrangements for the Authority.
3. The translation services required for the functioning of the Authority shall be provided by the Translation Centre for the Bodies of the European Union.

Article 74

Headquarters Agreement

The necessary arrangements concerning the accommodation to be provided for the Authority in the Member State where its seat is located and the facilities to be made available by that Member State, as well as the specific rules applicable in that Member State to the Executive Director, the members of the Management Board, the staff of the Authority and members of their families shall be laid down in a Headquarters Agreement between the Authority and that Member State concluded after obtaining the approval of the Management Board.

That Member State shall provide the best possible conditions to ensure the proper functioning of the Authority, including multilingual, European-oriented schooling and appropriate transport connections.

Article 75

Participation of third countries

1. Participation in the work of the Authority shall be open to third countries which have concluded agreements with the Union whereby they have adopted and are applying Union

⁽¹⁾ OJ 17, 6.10.1958, p. 385.

law in the areas of competence of the Authority as referred to in Article 1(2).

2. The Authority may cooperate with the countries referred to in paragraph 1, applying legislation which has been recognised as equivalent in the areas of competence of the Authority referred to in Article 1(2), as provided for in international agreements concluded by the Union in accordance with Article 216 TFEU.
3. Under the relevant provisions of the agreements referred to in paragraphs 1 and 2, arrangements shall be made specifying, in particular, the nature, scope and procedural aspects of the involvement of the countries referred to in paragraph 1 in the work of the Authority, including provisions relating to financial contributions and to staff. They may provide for representation, as an observer, on the Board of Supervisors, but shall ensure that those countries do not attend any discussions relating to individual financial market participants, except where there is a direct interest.

CHAPTER VIII TRANSITIONAL AND FINAL PROVISIONS

Article 76

Preparatory actions

1. Following the entry into force of this Regulation, and before the establishment of the Authority, CESR shall act in close cooperation with the Commission to prepare for the replacement of CESR by the Authority.
2. Once the Authority has been established, the Commission shall be responsible for the administrative establishment and initial administrative operation of the Authority until the Authority has appointed an Executive Director.

For that purpose, until such time as the Executive Director takes up his duties following his appointment by the Board of Supervisors in accordance with Article 51, the Commission may assign one official on an interim basis in order to fulfil the functions of the Executive Director. That period shall be

limited to the time necessary for the appointment of an Executive Director of the Authority.

The interim Executive Director may authorise all payments covered by credits provided in the budget of the Authority, once approved by the Management Board and may conclude contracts, including staff contracts following the adoption of the Authority's establishment plan.

3. Paragraphs 1 and 2 are without prejudice to the powers of the Board of Supervisors and the Management Board.
4. The Authority shall be considered the legal successor of CESR. By the date of establishment of the Authority, all assets and liabilities and all pending operations of CESR shall be automatically transferred to the Authority. The CESR shall establish a statement showing its closing asset and liability situation as of the date of that transfer. That statement shall be audited and approved by CESR and by the Commission.

Article 77

Transitional staff provisions

1. By way of derogation from Article 68, all employment contracts and secondment agreements concluded by CESR or its Secretariat and in force on 1 January 2011 shall be honoured until their expiry date. They may not be extended.
2. All members of staff under contracts referred to in paragraph 1 shall be offered the possibility of concluding temporary agent contracts under Article 2(a) of the Conditions of Employment of Other Servants at the various grades as set out in the Authority's establishment plan.

An internal selection limited to staff who have contracts with CESR or its Secretariat shall be carried out after the entry into force of this Regulation by the authority authorised to conclude contracts in order to check the ability, efficiency and integrity of those to be engaged. The internal selection procedure shall take full account of the skills and experience demonstrated by the individuals' performance prior to the engagement.

3. Depending on the type and level of functions to be performed, successful applicants shall be offered temporary agents' contracts of a duration corresponding at least to the time remaining under the prior contract.
4. The relevant national law relating to labour contracts and other relevant instruments shall continue to apply to staff members with prior contracts who choose not to apply for temporary agent's contracts or who are not offered temporary agents contracts in accordance with paragraph 2.

Article 78

National provisions

The Member States shall make such provision as is appropriate to ensure the effective application of this Regulation.

Article 79

Amendments

Decision No 716/2009/EC is hereby amended in so far as CESR is removed from the list of beneficiaries set out in Section B of the Annex to that Decision.

Article 80

Repeal

Commission Decision 2009/77/EC, establishing CESR, is hereby repealed with effect from 1 January 2011.

Article 81

Review

1. By 2 January 2014 and every 3 years thereafter, the Commission shall publish a general report on the experience acquired as a result of the operation of the Authority and the procedures laid down in this Regulation. That report shall evaluate, inter alia:
 - (a) the convergence in supervisory practices reached by competent authorities,

- (i) the convergence in functional independence of the competent authorities and in standards equivalent to corporate governance;
 - (ii) the impartiality, objectivity and autonomy of the Authority;
 - (b) the functioning of the colleges of supervisors;
 - (c) the progress achieved towards convergence in the fields of crisis prevention, management and resolution, including Union funding mechanisms;
 - (d) the role of the Authority as regards systemic risk;
 - (e) the application of the safeguard clause established in Article 38;
 - (f) the application of the binding mediation role established in Article 19.
2. The report referred to in paragraph 1 shall also examine whether:
- (a) it is appropriate to continue separate supervision of banking, insurance, occupational pensions, securities and financial markets;
 - (b) it is appropriate to undertake prudential supervision and supervise the conduct of business separately or by the same supervisor;
 - (c) it is appropriate to simplify and reinforce the architecture of the ESFS in order to increase the coherence between the macro and the micro levels and between the ESAs;
 - (d) the evolution of the ESFS is consistent with that of the global evolution;
 - (e) there is sufficient diversity and excellence within the ESFS;

- (f) accountability and transparency in relation to publication requirements are adequate;
 - (g) the resources of the Authority are adequate to carry out its responsibilities;
 - (h) it is appropriate for the seat of the Authority to be maintained or to move the ESAs to a single seat to enhance better coordination between them.
3. Concerning the issue of direct supervision of institutions or infrastructures of pan-European reach and taking account of market developments, the Commission shall draw up an annual report on the appropriateness of entrusting the Authority with further supervisory responsibilities in this area.
4. The report and any accompanying proposals, as appropriate, shall be forwarded to the European Parliament and to the Council.

Article 82

Entry into force

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2011, with the exception of Article 76 and Article 77(1) and (2), which shall apply as from the date of its entry into force.

The Authority shall be established on 1 January 2011.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 24 November 2010.

For the European Parliament
The President
J. BUZEK

For the Council
The President
O. CHASTEL

Annexure 9

EFRAG European Financial Reptg. Advisory Group

John F. Mogg
Director General
Internal Market – Directorate General
Avenue de Cortenbergh 107
1049 Brussels

19 June 2002

Dear Mr. Mogg

Re: Endorsement of existing International Accounting Standards and related interpretations.

We are pleased to respond to your request of 19th March 2002 for our opinion on the endorsement of all existing IAS and SIC interpretations.

The introduction of the IAS Regulation requiring listed companies throughout Europe to adopt International Accounting Standards by 2005 is a major achievement. The common basis for financial reporting based on high quality global standards provides a platform for efficient cross border investment both within and beyond the European Union. It can be expected to enhance the operation of European capital markets and provide an example other countries may wish to follow.

EFRAG has reviewed IAS (International Accounting Standards) 1 to 41 (inclusive) and the related SIC (Standing Interpretations Committee) interpretations 1 to 33 inclusive (hereafter referred to as “the current standards”) to the extent that they are extant at 1 March 2002, as listed in the appendix 1-2 to this letter.

The evaluation of the current standards was based on a general review of those standards, on our experience of the application of those standards in practice by various companies within Europe

and on our general knowledge of discussions surrounding those standards. We have also sought input in accordance with our due process procedures from standard setters and market participants.

In our opinion the current standards meet the requirements of the Regulation of the European Parliament and of the Council on the application of International Accounting Standards by EU listed companies from 2005 onwards that:

- i. they are not contrary to the true and fair principle set out in Article 2(3) of the 4th Directive (78/660/EEC) and Article 16(3) of the 7th Directive (83/349/EEC), and
- ii. they meet the criteria of understandability, relevance, reliability and comparability required of the financial information needed for making economic decisions and assessing the stewardship of management.

For the reasons given above, we believe that it is in the European interest that the process of adoption of the current standards should now be set in motion. Accordingly, we recommend endorsement of the current standards “en bloc”.

As you are aware, the IASB is actively reviewing a number of the current standards and a number of changes and improvements are expected to result from this review. We shall consider all changes to those standards when promulgated and give our advice on those changes at that time. However, this does not in any way affect the advice given in this letter that the current standards should be endorsed “en bloc”.

Without qualifying the advice given above we wish to add certain comments on individual standards as follows:

- i. IAS 1 (at paragraph 22) indicates that in the absence of a specific international standard an entity must use an accounting policy that is consistent with the IAS Framework. Whilst the Framework is not itself a standard, EFRAG considers it important that entities required to comply with IAS under the IAS Regulation have access to the Framework and that it is published in the Official Journal with an appropriate description of its status.

- ii. IAS 15 is a standard that currently remains in force but IASB has published proposals for its deletion as part of the Improvements project. EFRAG believes it appropriate to endorse the existing standard as part of the initial en bloc endorsement process but recognises that the Commission may not wish to have it translated and published in the Official Journal at this time.
- iii. IAS 39 is an extremely complex and controversial standard. To make it more understandable IASB published Guidance Notes on application of the standard. These Guidance Notes do not have the status of a standard and EFRAG has therefore not included them in its endorsement recommendations.
- iv. In your letter you have indicated a wish to receive, together with the endorsement advice (given above), any suggestions of EFRAG regarding potential improvements to the standards under review.

The fact that IASB has included no less than 12 standards in its general Improvements project points to the importance of keeping standards under constant review.

IASB currently has IAS 39 under review as a separate Improvements project. EFRAG recognises that IAS 39 currently gives rise to the greatest difficulties— particularly in the area of hedge accounting. It therefore welcomes the fact that IASB is currently in the process of improving IAS 39 and will take a keen interest in the extent of improvement. EFRAG will continue to press for the improvements it believes to be necessary.

We should be happy to discuss our advice with you, other officials of the EU Commission or the Accounting Regulatory Committee as you may wish.

Yours sincerely

Johan van Helleman
Chairman, EFRAG Technical Expert Group

*Appendix 1***INTERNATIONAL ACCOUNTING STANDARDS
(1 to 41 extant at 1 March 2002)**

IAS No.	Title
IAS 1	Presentation of Financial Statements (revised 1997)
IAS 2	Inventories (revised 1993)
IAS 7	Cash Flow Statements (revised 1992)
IAS 8	Net Profit or Loss for the Period, Fundamental Errors and Changes in Accounting Policies (revised 1993)
IAS 10	Events After the Balance Sheet Date (revised 1999)
IAS 11	Construction Contracts (revised 1993)
IAS 12	Income Taxes (revised 2000)
IAS 14	Segment Reporting (revised 1997)
IAS 15	Information Reflecting the Effects of Changing Prices (reformatted 1994)
IAS 16	Property, Plant and Equipment (revised 1998)
IAS 17	Leases (revised 1997)
IAS 18	Revenue (revised 1993)
IAS 19	Employee Benefits (revised 2000)
IAS 20	Accounting for Government Grants and Disclosure of Government Assistance (reformatted 1994)
IAS 21	The Effects of Changes in Foreign Exchange Rates (revised 1993)
IAS 22	Business Combinations (revised 1998)
IAS 23	Borrowing Costs (revised 1993)

IAS 24	Related Party Disclosures (reformatted 1994)
IAS 26	Accounting and Reporting by Retirement Benefit Plans (reformatted 1994)
IAS 27	Consolidated Financial Statements and Accounting for Investments in Subsidiaries (revised 2000)
IAS 28	Accounting for Investments in Associates (revised 2000)
IAS 29	Financial Reporting in Hyperinflationary Economies (reformatted 1994)
IAS 30	Disclosures in the Financial Statements of Banks and Similar Financial Institutions (reformatted 1994)
IAS 31	Financial Reporting of Interests in Joint Ventures (revised 2000)
IAS 32	Financial Instruments: Disclosure and Presentation (revised 1998)
IAS 33	Earnings per Share (1997)
IAS 34	Interim Financial Reporting (1998)
IAS 35	Discontinuing Operations (1998)
IAS 36	Impairment of Assets (1998)
IAS 37	Provisions, Contingent Liabilities and Contingent Assets (1998)
IAS 38	Intangible Assets (1998)
IAS 39	Financial Instruments: Recognition and Measurement (revised 2000)
IAS 40	Investment Property (2000)
IAS 41	Agriculture (2001)

Discontinuity in the numbering of IAS is due to the fact that some of the first standards have been superseded by more recent ones.

**STANDING INTERPRETATIONS COMMITTEE RULINGS
1 to 33 extant at 1 March 2002**

SIC No.	Title
SIC 1	Consistency – Different Cost Formulas for Inventories
SIC 2	Consistency – Capitalisation of Borrowing Costs
SIC 3	Elimination of Unrealised Profits and Losses on Transactions with Associates
SIC 5	Classification of Financial Instruments – Contingent Settlement Provisions
SIC 6	Costs of Modifying Existing Software
SIC 7	Introduction of the Euro
SIC 8	First-Time Application of IASs as the Primary Basis of Accounting
SIC 9	Business Combinations – Classification either as Acquisitions or Unitings of Interests
SIC 10	Government Assistance – No Specific Relation to Operating Activities
SIC 11	Foreign Exchange – Capitalisation of Losses Resulting from Severe Currency Devaluations
SIC 12	Consolidation – Special Purpose Entities
SIC 13	Jointly Controlled Entities – Non-Monetary Contributions by Venturers
SIC 14	Property, Plant and Equipment – Compensation for the Impairment or Loss of Items
SIC 15	Operating Leases – Incentives

SIC 16	Share Capital – Reacquired Own Equity Instruments (Treasury Shares)
SIC 17	Equity – Costs of an Equity Transaction
SIC 18	Consistency – Alternative Methods
SIC 19	Reporting Currency – Measurement and Presentation of Financial Statements under IAS 21 and IAS 29
SIC 20	Equity Accounting Method – Recognition of Losses
SIC 21	Income Taxes – Recovery of Revalued Non-Depreciable Assets
SIC 22	Business Combinations – Subsequent Adjustment of Fair Values and Goodwill Initially Reported
SIC 23	Property, Plant and Equipment – Major Inspection or Overhaul Costs
SIC 24	Earnings per Share – Financial Instruments and Other Contracts that May be Settled in Shares
SIC 25	Income Taxes – Changes in the Tax Status of an Enterprise or its Shareholders
SIC 27	Evaluating the Substance of Transactions in the Legal Form of a Lease
SIC 28	Business Combinations – “Date of Exchange” and Fair Value of Equity Instruments
SIC 29	Disclosure – Service Concession Arrangements
SIC 30	Reporting Currency – Translation from Measurement Currency to Presentation Currency
SIC 31	Revenue – Barter Transactions Involving Advertising Services
SIC 32	Intangible Assets – Web Site Costs
SIC 33	Consolidation and Equity Method – Potential Voting Rights and Allocation of Ownership Interests

Annexure 10

10 December 2001

E F R A G
c/o FEE
rue de la Loi 83
B-1040 BRUSSELS

Mr. Karel Van Hulle
European Commission
DG Internal Market
C107 03/10
rue de la Loi 200
B - 1049 BRUSSELS

Dear Karel,

Re: Modernisation of the Accounting Directives

We are pleased to respond to your request inviting us to provide comments on whether the modernised 4th and 7th Directives remove all inconsistencies between the Accounting Directives and existing International Accounting Standards and the SIC interpretations.

As agreed with you our work was carried out drawing on our experience and by considering of the following documents:

- Commission/Contact Committee Examination of the Conformity between IAS 1 to 41 and the European Accounting Directives
- Commission/Contact Committee Examination: examination of the conformity between SIC 1 to SIC 25 and the European Accounting Directives
- FEE Study Comparison of the EC Accounting Directives and IASs
- FEE Study *"To what extent options in International Accounting Standards can be used for consolidated accounts under the EC Accounting Directives"*

- FEE Discussion Paper on Modernisation of the Accounting Directives (April 2001)

As a result of our work we concluded that there are no actual inconsistencies between IAS 1 to 41 (and related SIC) and the 4th and 7th Directives but we do recommend clarification of the Directives in three areas as follows:

IAS 8 Fundamental Errors and Changes in Accounting Policy

IAS 8 provides for two possible treatments of correction of fundamental errors and changes in accounting policy (see para 37, 40 and 46). Under one of those treatments the effects are dealt with retroactively so that the comparative figures are amended and an adjustment is made to the opening retained earnings.

It has been suggested that Article 31(f), which requires that the opening balance sheet for each financial year must correspond to the closing balance sheet for the preceding financial year, might prevent retroactive adjustment.

EFRAG believes that is not the case and that there is no conflict between IAS and the Directives in this regard but, as some uncertainty exists, it would be useful to clarify the meaning of Article 31(f).

IAS 19 Use of the Corridor Approach in relation to Employee Benefits

Whilst recognising that the 4th Directive does not directly deal with accounting for pension costs, it has been suggested that use of the Corridor Approach for the deferral of actuarial losses is incompatible with the 4th Directive which requires that all losses be provided for.

EFRAG concluded that there is no incompatibility because both require the provision of losses. The IAS however recognises that the actuarial estimate is not an exact number and that the corridor represents a margin 10% either side of the central point and within the normal range of actuarial estimates. As such IAS 19 does

require full provision for losses but acknowledges that the amount of the loss will be based within a range determined by the corridor.

Again it would be useful to clarify this.

IAS 22 Reverse Acquisitions

IAS 22 paragraph 12 refers to accounting for reverse acquisitions whereby a business combination occurs and the shareholders of the legally acquired company become the majority shareholders of the combined group. IAS 22 recognises that legally the enterprise issuing the shares may be regarded as the parent or continuing enterprise, the enterprise whose shareholders now control the combined enterprise is the acquirer enjoying the voting power. The enterprise issuing the shares is deemed to have been acquired by the other enterprise and the latter is deemed to be the acquirer who must apply the purchase method to the assets and liabilities of the enterprise issuing the shares.

Reverse acquisitions were not in contemplation when the 7th Directive was prepared and it therefore does not discuss the accounting for such transactions. Nevertheless, it may be thought to require that the legal parent is treated as the acquirer and for that reason clarification is needed. We believe that, even if that is the effect of the wording of the 7th Directive, this is an example of those rare situations where the true and fair override can and should legitimately be applied so that there is no incompatibility between the IAS and the Directive. However, as the FEE comparison points out, if pooling is to be abolished, reverse acquisitions may become more common. Accordingly, it would be useful to clarify the 7th Directive requirements, perhaps by inserting in Article 19 a new paragraph 3 saying:

“3. Where under the terms of an acquisition the former shareholders of one of the undertakings acquired are put in a position where they hold a majority of the shares in the combined undertaking or otherwise dominate the general meetings or Board of Directors of the combined undertaking, the set-off referred to in paragraph 1 above shall be performed as though that acquired undertaking were the parent undertaking and all the other undertakings included in the consolidation were its subsidiary undertakings. This paragraph

shall not, however, alter the identity of the undertaking determined under Article 1 to be the parent undertaking.”

In our review we worked on the presumption that the Directives should permit all options permitted under IAS and that it should be assumed that where there are Member State options the comparability should be assessed for the option most favourable to the application of IAS. In practice we are aware that some Member States have implemented Member State options which are probably in conflict with IAS.

We are aware that a number of standards are in the process of being changed and these could result in conflicts with the Directives. In particular we have in mind that a new standard on business combinations may well adopt the new US practice in relation to goodwill where it may no longer be amortised (and may not be written off immediately to reserves) but would be subject to an impairment test which would result in write downs being charged to income from time to time where necessary. You may wish to consider whether modifications to the Directives should be made in anticipation of changes to IAS, which would otherwise give rise to future conflicts.

Finally, we must warn that the limited review we have performed cannot provide any guarantee that there are no further conflicts but we hope this analysis will have proved useful to you.

Yours sincerely,

Johan van Helleman
Chairman EFRAG Technical Expert Group

Annexure 11

EUROPEAN UNION

THE EUROPEAN PARLIAMENT

THE COUNCIL

Brussels, 27 May 2002
(OR. en)

Interinstitutional File:

2001/0044 (COD)

PE-CONS 3626/02

DRS 28
CODEC 544

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject : Regulation of the European Parliament and of the Council
on the application of international accounting standards

REGULATION (EC) No /2002 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

on the application of international accounting standards

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,
and in particular Article 95(1) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Economic and Social
Committee²,

Acting in accordance with the procedure laid down in Article 251 of
the Treaty³,

1 OJ C 154 E, 29.5.2001, p. 285.

2 OJ C 260, 17.9.2001, p. 86.

3 Opinion of the European Parliament of 12 March 2002 (OJC) and Decision of
the Council of.

Whereas:

- (1) The Lisbon European Council of 23-24 March 2000 emphasised the need to accelerate completion of the internal market for financial services, set the deadline of 2005 to implement the Commission's Financial Services Action Plan and urged that steps be taken to enhance the comparability of financial statements prepared by publicly traded companies.
- (2) In order to contribute to a better functioning of the internal market, publicly traded companies must be required to apply a single set of high quality international accounting standards for the preparation of their consolidated financial statements. Furthermore, it is important that the financial reporting standards applied by Community companies participating in financial markets are accepted internationally and are truly global standards. This implies an increasing convergence of accounting standards currently used internationally with the ultimate objective of achieving a single set of global accounting standards.
- (3) Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies¹, Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts², Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions³ and Council Directive 91/674/EEC on the annual accounts and consolidated accounts of insurance companies⁴ are also addressed to publicly traded Community companies. The reporting requirements set out in these Directives cannot ensure the high level of transparency and comparability of financial reporting from all publicly traded Community companies which is a necessary condition for building an integrated capital market

1 OJ L 222, 14.8.1978, p. 11. Directive as last amended by European Parliament and Council Directive 2001/65/EC (OJ L 283, 27.10.2001, p. 28).

2 OJ L 193, 18.7.1983, p. 1. Directive as last amended by European Parliament and Council Directive 2001/65/EC.

3 OJ L 372, 31.12.1986, p. 1. Directive as last amended by European Parliament and Council Directive 2001/65/EC.

4 OJ L 374, 31.12.1991, p. 7.

which operates effectively, smoothly and efficiently. It is therefore necessary to supplement the legal framework applicable to publicly traded companies.

- (4) This Regulation aims at contributing to the efficient and cost-effective functioning of the capital market. The protection of investors and the maintenance of confidence in the financial markets is also an important aspect of the completion of the internal market in this area. This Regulation reinforces the freedom of movement of capital in the internal market and helps to enable Community companies to compete on an equal footing for financial resources available in the Community capital markets, as well as in world capital markets.
- (5) It is important for the competitiveness of Community capital markets to achieve convergence of the standards used in Europe for preparing financial statements, with international accounting standards that can be used globally, for cross-border transactions or listing anywhere in the world.
- (6) On 13 June 2000, the Commission published its Communication on "EU Financial Reporting Strategy: the way forward" in which it was proposed that all publicly traded Community companies prepare their consolidated financial statements in accordance with one single set of accounting standards, namely International Accounting Standards (IAS), at the latest by 2005.
- (7) International Accounting Standards (IASs) are developed by the International Accounting Standards Committee (IASC), whose purpose is to develop a single set of global accounting standards. Further to the restructuring of the IASC, the new Board on 1 April 2001, as one of its first decisions, renamed the IASC as the International Accounting Standards Board (IASB) and, as far as future international accounting standards are concerned, renamed IAS as International Financial Reporting Standards (IFRS). These standards should, wherever possible and provided that they ensure a high degree of transparency and comparability for financial reporting in the Community, be made obligatory for use by all publicly traded Community companies.

- (8) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹ and with due regard to the declaration made by the Commission in the European Parliament on 5 February 2002 concerning the implementation of financial services legislation.
- (9) To adopt an international accounting standard for application in the Community, it is necessary firstly that it meets the basic requirement of the aforementioned Council Directives, that is to say that its application results in a true and fair view of the financial position and performance of an enterprise – this principle being considered in the light of the said Council Directives without implying a strict conformity with each and every provision of those Directives; secondly that, in accordance with the conclusions of the Council of 17 July 2000, it is conducive to the European public good and lastly that it meets basic criteria as to the quality of information required for financial statements to be useful to users.
- (10) An accounting technical committee should provide support and expertise to the Commission in the assessment of international accounting standards.
- (11) The endorsement mechanism should act expeditiously on proposed international accounting standards and also be a means to deliberate, reflect and exchange information on international accounting standards among the main parties concerned, in particular national accounting standard setters, supervisors in the fields of securities, banking and insurance, central banks including the ECB, the accounting profession and users and preparers of accounts. The mechanism should be a means to foster common understanding of adopted international accounting standards in the Community.
- (12) In accordance with the principle of proportionality, the measures provided for in this Regulation, in requiring that a

¹ OJ L 184 17.7.1999, p. 23.

single set of international accounting standards be applied to publicly traded companies, are necessary to achieve the objective of contributing to the efficient and cost-effective functioning of Community capital markets and thereby to the completion of the internal market.

- (13) In accordance with the same principle, it is necessary, as regards annual accounts, to leave to Member States the option to permit or require publicly traded companies to prepare them in conformity with international accounting standards adopted in accordance with the procedure laid down in this Regulation. Member States may decide as well to extend this permission or this requirement to other companies as regards the preparation of their consolidated accounts and/or their annual accounts.
- (14) In order to facilitate an exchange of views and to allow Member States to coordinate their positions, the Commission should periodically inform the accounting regulatory committee about active projects, discussion papers, point outlines and exposure drafts issued by the IASB and about the consequential technical work of the accounting technical committee. It is also important that the accounting regulatory committee is informed at an early stage if the Commission intends not to propose to adopt an international accounting standard.
- (15) In its deliberations on and in elaborating positions to be taken on documents and papers issued by the IASB in the process of developing international accounting standards (IFRS and SIC-IFRIC), the Commission should take into account the importance of avoiding competitive disadvantages for European companies operating in the global marketplace, and, to the maximum possible extent, the views expressed by the delegations in the Accounting Regulatory Committee. The Commission will be represented in constituent bodies of the IASB.
- (16) A proper and rigorous enforcement regime is key to underpinning investors' confidence in financial markets. Member States, by virtue of Article 10 of the Treaty, are required to take appropriate measures to ensure compliance

with international accounting standards. The Commission intends to liaise with Member States, notably through the Committee of European Securities Regulators (CESR), to develop a common approach to enforcement.

- (17) Further, it is necessary to allow Member States to defer the application of certain provisions until 2007 for those companies publicly traded both in the Community and on a regulated third-country market which are already applying another set of internationally accepted standards as the primary basis for their consolidated accounts as well as for companies which have only publicly traded debt securities. It is nonetheless crucial that by 2007 at the latest a single set of global international accounting standards, the IAS, apply to all Community companies publicly traded on a Community regulated market.
- (18) In order to allow Member States and companies to carry out the necessary adaptations to make the application of international accounting standards possible, it is necessary to apply certain provisions only in 2005. Appropriate provisions should be put in place for the first-time application of IAS by companies as a result of the entry into force of the present regulation. Such provisions should be drawn up at international level in order to ensure international recognition of the solutions adopted,

HAVE ADOPTED THIS REGULATION :

Article 1

Aim

This Regulation has as its objective the adoption and use of international accounting standards in the Community with a view to harmonising the financial information presented by the companies referred to in Article 4 in order to ensure a high degree of transparency and comparability of financial statements and hence an efficient functioning of the Community capital market and of the Internal Market.

Article 2

Definitions

For the purpose of this Regulation, "international accounting standards" shall mean International Accounting Standards (IAS), International Financial Reporting Standards (IFRS) and related Interpretations (SIC-IFRIC interpretations), subsequent amendments to those standards and related interpretations, future standards and related interpretations issued or adopted by the International Accounting Standards Board (IASB).

Article 3

Adoption and use of international accounting standards

1. In accordance with the procedure laid down in Article 6(2), the Commission shall decide on the applicability within the Community of international accounting standards.
2. The international accounting standards can only be adopted if:
 - they are not contrary to the principle set out in Article 2(3) of Directive 78/660/EEC and in Article 16(3) of Directive 83/349/EEC and are conducive to the European public good and,
 - they meet the criteria of understandability, relevance, reliability and comparability required of the financial information needed for making economic decisions and assessing the stewardship of management.
3. At the latest by 31 December 2002, the Commission shall, in accordance with the procedure laid down in Article 6(2), decide on the applicability within the Community of the international accounting standards in existence upon entry into force of this Regulation.
4. Adopted international accounting standards shall be published in full in each of the official languages of the Community, as a Commission regulation, in the Official Journal of the European Communities.

Article 4

Consolidated accounts of publicly traded companies

For each financial year starting on or after 1 January 2005, companies governed by the law of a Member State shall prepare their consolidated accounts in conformity with the international accounting standards adopted in accordance with the procedure laid down in Article 6(2) if, at their balance sheet date, their securities are admitted to trading on a regulated market of any Member State within the meaning of Article 1(13) of Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field.¹

Article 5

Options in respect of annual accounts and of non publicly-traded companies

Member States may permit or require

- (a) the companies referred to in Article 4 to prepare their annual accounts,
- (b) companies other than those referred to in Article 4 to prepare their consolidated accounts and/or their annual accounts,

in conformity with the international accounting standards adopted in accordance with the procedure laid down in Article 6(2).

Article 6

Committee Procedure

1. The Commission shall be assisted by an accounting regulatory committee hereinafter referred to as "the Committee".
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

Article 7

Reporting and coordination

1. The Commission shall liaise on a regular basis with the Committee about the status of active IASB projects and any related documents issued by the IASB in order to coordinate positions and to facilitate discussions concerning the adoption of standards that might result from these projects and documents.
2. The Commission shall duly report to the Committee in a timely manner if it intends not to propose the adoption of a standard.

Article 8

Notification

Where Member States take measures by virtue of Article 5, they shall immediately communicate these to the Commission and to other Member States.

Article 9

Transitional provisions

By way of derogation from Article 4, Member States may provide that the requirements of Article 4 shall only apply for each financial year starting on or after January 2007 to those companies:

- (a) whose debt securities only are admitted on a regulated market of any Member State within the meaning of Article 1(13) of Directive 93/22/EEC; or
- (b) whose securities are admitted to public trading in a non-member state and which, for that purpose, have been using internationally accepted standards since a financial year that

started prior to the publication of this Regulation in the Official Journal of the European Communities.

Article 10

Information and Review

The Commission shall review the operation of this Regulation and report thereon to the European Parliament and to the Council by 1 July 2007 at the latest.

Article 11

Entry into force

This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Communities.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President

Annexure 12

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)
Date: 1/07/2010

European Commission	Austria	Belgium	Bulgaria
Status of the implementation of IAS/IFRS	Final law	Final law	Final law
Article 5(a) of the IAS Regulation LISTED COMPANIES			
1. Does your MS use the option to permit IAS in the annual accounts for listed companies?	No	No	No
2. Does your MS use the option to require IAS in the annual accounts for listed companies?	No	Yes, for real estate investment companies (SICAF/BEVAK)	Yes
Article 5(b) of the IAS Regulation OTHER COMPANIES			
1. Does your MS use the option to permit IAS in the consolidated accounts for other companies? If yes, what type of companies?	Yes, all companies	Yes, all companies	Yes, for SMEs ¹
2. Does your MS use the option to require IAS in the consolidated accounts for other companies? If yes, what type of companies?	No	Yes, for credit institutions, and investment firms	Yes, for all other types of companies, except SMEs and entities in

¹Bulgarian SMEs must use the same accounting framework (IAS or national GAAP) for both annual and consolidated accounts

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

		Date: 1/07/2010		
European Commission	Austria	Belgium	Bulgaria	liquidation and insolvency
3. Does your MS use the option to permit IAS in the annual accounts for other companies? If yes, what type of companies?	No	No	Yes, for SMEs	
4. Does your MS use the option to require IAS in the annual accounts for other companies? If yes, what type of companies?	No	No	Yes, for all other types of companies, except SMEs and entities in liquidation and insolvency	
Article 9 of the IAS Regulation (a) Did your MS use the option to defer the application of IAS until 2007 for companies whose debt securities only were admitted on a regulated market of any MS?	Yes	Yes	No	
(b) Did your MS use the option to defer the application of IAS until 2007 for companies whose securities were admitted to public trading	Yes	Yes	No	

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

Date: 1/07/2010

European Commission	Austria	Belgium	Bulgaria
in a non-member State and which, for that purpose, had been using internationally accepted standards since a financial year that started prior to the publication of the IAS Regulation in the OJ?			
<p>Miscellaneous Was earlier adoption (before 2005) of IAS allowed? If yes, for what type of companies/ from when?</p>	Yes, consolidated accounts since 1998	Yes, cons. accounts for all companies	<p>a) Yes, mandatory for listed companies, banks, insurance and investment undertakings from 1.01.2003</p> <p>b) Other companies - voluntary application from 01.01.2003</p>

¹Bulgarian SMEs must use the same accounting framework (IAS or national GAAP) for both annual and consolidated accounts

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

Date: 1/07/2010

European Commission	Cyprus	Czech Rep.	Denmark
<i>Status of the implementation of IAS/IFRS</i>	Final law	Final law	Final law
Article 5(a) of the IAS Regulation LISTED COMPANIES			
1. Does your MS use the option to permit IAS in the annual accounts for listed companies?	No	No	Fin. entities: Yes Other entities: Yes, for annual accounts for listed companies which do prepare consolidated accounts.
2. Does your MS use the option to require IAS in the annual accounts for listed companies?	Yes	Yes	Fin. entities: No Other entities: Yes, for annual accounts for listed companies which do not prepare consolidated accounts.
Article 5(b) of the IAS Regulation OTHER COMPANIES			
1. Does your MS use the option to permit IAS	No	Yes	Yes, all types

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

		Date: 1/07/2010		
European Commission		Cyprus	Czech Rep.	Denmark
	in the consolidated accounts for other companies? If yes, what type of companies?		All types of companies	
2.	Does your MS use the option to require IAS in the consolidated accounts for other companies? If yes, what type of companies?	Yes, all companies	No	No
3.	Does your MS use the option to permit IAS in the annual accounts for other companies? If yes, what type of companies?	No	No	Yes, all types
4.	Does your MS use the option to require IAS in the annual accounts for other companies? If yes, what type of companies?	Yes, all companies	No	No
Article 9 of the IAS Regulation				
(a)	Did your MS use the option to defer the application of IAS until 2007 for companies whose debt securities only were admitted on a regulated market of any MS?	No	No	Fin. entities: No Other entities: Yes
(b)	Did your MS use the option to defer the application of IAS until 2007 for companies	No	No	No

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

Date: 1/07/2010

European Commission	Cyprus	Czech Rep.	Denmark
<p>whose securities were admitted to public trading in a non-member State and which, for that purpose, had been using internationally accepted standards since a financial year that started prior to the publication of the IAS Regulation in the OJ?</p>			
<p>Miscellaneous Was earlier adoption (before 2005) of IAS allowed? If yes, for what type of companies/ from when?</p>	<p>Yes (a) Requirement of the Institute of Certified Public Accountants of Cyprus for all companies since 1981 (b) Requirement of the Stock Exchange legislation for listed companies since 2003</p>	<p>Yes, all types of companies</p>	<p>Yes for 2004. The annual and consolidated accounts for all companies except for financial companies.</p>

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

		Date: 1/07/2010	
European Commission	Estonia	Finland	France
<i>Status of the implementation of IAS/IFRS</i>	Final law	Final law	Final law
<i>Article 5(a) of the IAS Regulation</i>			
LISTED COMPANIES			
1. Does your MS use the option to permit IAS in the annual accounts for listed companies?	No	Yes ²	No
2. Does your MS use the option to require IAS in the annual accounts for listed companies?	Yes	No	No
<i>Article 5(b) of the IAS Regulation</i>			
OTHER COMPANIES			
1. Does your MS use the option to permit IAS in the consolidated accounts for other companies? If yes, what type of companies?	Yes, All types other than below	Yes ³ , all types	Yes
2. Does your MS use the option to require IAS in the consolidated accounts for other companies? If yes, what type of companies?	Yes. Credit institutions, insurance undertakings, financial holding companies, mixed financial holding	No	No

² Finland: Not insurance companies

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

Date: 1/07/2010

European Commission	Estonia	Finland	France
	companies, investment firms		
3. Does your MS use the option to permit IAS in the annual accounts for other companies? If yes, what type of companies?	Yes, All types other than below	Yes ^{2,3}	No
4. Does your MS use the option to require IAS in the annual accounts for other companies? If yes, what type of companies?	Yes. Credit institutions, insurance undertakings, financial holding companies, mixed financial holding companies, investment firms	No	No
Article 9 of the IAS Regulation (a) Did your MS use the option to defer the application of IAS until 2007 for companies whose debt securities only were admitted on a regulated market of any MS?	No	Yes	Yes

³ Finland and Greece: Companies, which are audited by certified auditors

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

European Commission	Estonia	Finland	France
<p>(b) Did your MS use the option to defer the application of IAS until 2007 for companies whose securities were admitted to public trading in a non-member State and which, for that purpose, had been using internationally accepted standards since a financial year that started prior to the publication of the IAS Regulation in the OJ?</p>	<p>No</p>	<p>No</p>	<p>N/A</p>
<p>Miscellaneous Was earlier adoption (before 2005) of IAS allowed? If yes, for what type of companies/ from when?</p>	<p>Yes, All types 01.01.2003</p>	<p>1. Listed companies consolidated accounts 30.9.2003 2. Other companies (not insurance companies):all accounts 2004</p>	<p>No</p>

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

Date: 1/07/2010

European Commission	Germany	Greece	Hungary
<i>Status of the implementation of IAS/IFRS</i>	Final law	Final law	Final law
<i>Article 5(a) of the IAS Regulation</i> LISTED COMPANIES			
1. Does your MS use the option to permit IAS in the annual accounts for listed companies?	No, but additionally to still required local GAAP	No	No, but additionally to still required local GAAP
2. Does your MS use the option to require IAS in the annual accounts for listed companies?	No	Yes	No
<i>Article 5(b) of the IAS Regulation</i> OTHER COMPANIES			
1. Does your MS use the option to permit IAS in the consolidated accounts for other companies? If yes, what type of companies?	Yes, all types	Yes, some companies ³	Yes, all types of companies within the scope of Accounting Act
2. Does your MS use the option to require IAS in the consolidated accounts for other companies? If yes, what type of companies?	Yes, companies, which have filed for a listing	Yes, banks, and other financial institutions	No

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

Date: 1/07/2010

European Commission	Germany	Greece	Hungary
3. Does your MS use the option to permit IAS in the annual accounts for other companies? If yes, what type of companies?	No, but additionally to still required local GAAP	Yes, some companies ³	No, but additionally to still required local GAAP
4. Does your MS use the option to require IAS in the annual accounts for other companies? If yes, what type of companies?	No	Yes, banks, and other financial institutions	No
Article 9 of the IAS Regulation			
(a) Did your MS use the option to defer the application of IAS until 2007 for companies whose debt securities only were admitted on a regulated market of any MS?	Yes	No	Yes
(b) Did your MS use the option to defer the application of IAS until 2007 for companies whose securities were admitted to public trading in a non-member State and which, for that purpose, had been using internationally accepted standards since a financial year that started prior to the publication of the IAS Regulation in the OJ?	Yes	No	No

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

Date: 1/07/2010

European Commission	Germany	Greece	Hungary
Miscellaneous Was earlier adoption (before 2005) of IAS allowed? If yes, for what type of companies/ from when?	Yes, cons. acc. option for listed companies (as from 1998) and for unlisted comps from 2003	31.12.2004 Yes, some companies ³	No, but additionally to still required local GAAP

² Finland: Not insurance companies

³ Finland and Greece: Companies, which are audited by certified auditors

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

Date: 1/07/2010

European Commission	Ireland	Italy	Latvia
<i>Status of the implementation of IAS/IFRS</i>	Final law	Final law	Final law
<i>Article 5(a) of the IAS Regulation</i> LISTED COMPANIES			
1. Does your MS use the option to permit IAS in the annual accounts for listed companies?	Yes	No, even for insurance companies	No
2. Does your MS use the option to require IAS in the annual accounts for listed companies?	No	Yes ⁴ , except for insurance companies	Yes
<i>Article 5(b) of the IAS Regulation</i> OTHER COMPANIES			
1. Does your MS use the option to permit IAS in the consolidated accounts for other companies? If yes, what type of companies?	Yes, all types	Yes, except for small enterprises and required companies	Yes, all types (except for banks, insurance commercial companies and other supervised financial institutions)

⁴ Italy: Listed insurance enterprises must comply with IASs only if they do not draw up consolidated accounts

⁵ Italy: Supervised financial companies; companies with financial instruments widely distributed among the public; insurance companies

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

Date: 1/07/2010

European Commission	Ireland	Italy	Latvia
2. Does your MS use the option to require IAS in the consolidated accounts for other companies? If yes, what type of companies?	No	Yes, for some companies ⁵	Yes, banks, insurance commercial companies and other supervised financial institutions.
3. Does your MS use the option to permit IAS in the annual accounts for other companies? If yes, what type of companies?	Yes, all bar companies not trading for gain	Yes, except for insurance small enterprises and required companies	No
4. Does your MS use the option to require IAS in the annual accounts for other companies? If yes, what type of companies?	No	Yes, some companies ⁶	Yes, banks, insurance commercial companies and other supervised financial institutions
Article 9 of the IAS Regulation (a) Did your MS use the option to defer the application of IAS until 2007 for companies whose debt securities only were admitted on a regulated market of any MS?	Yes	No	No

⁶ Italy: Supervised financial companies; companies with financial instruments widely distributed among the public

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

Date: 1/07/2010

European Commission	Ireland	Italy	Latvia
(b) Did your MS use the option to defer the application of IAS until 2007 for companies whose securities were admitted to public trading in a non-member State and which, for that purpose, had been using internationally accepted standards since a financial year that started prior to the publication of the IAS Regulation in the OJ?	No	No	No
Miscellaneous Was earlier adoption (before 2005) of IAS allowed? If yes, for what type of companies/ from when?	No	No	Yes, banks, insurance companies, other supervised financial institutions had to use IAS before 2005

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

Date: 1/07/2010

European Commission	Lithuania	Luxembourg	Malta
<i>Status of the implementation of IAS/IFRS</i>	Final law	Final law ⁷ Law proposal	Final law
Article 5 (a) of the IAS Regulation LISTED COMPANIES			
1. Does your MS use the option to permit IAS in the annual accounts for listed companies?	No	Yes	No
2. Does your MS use the option to require IAS in the annual accounts for listed companies?	Yes	No	Yes
Article 5(b) of the IAS Regulation OTHER COMPANIES			
1. Does your MS use the option to permit IAS in the consolidated accounts for other companies? If yes, what type of companies?	Yes, all types, except banks and other credit institutions, insurance companies	Yes, all types	Yes, all other than those listed below
2. Does your MS use the option to require IAS in the consolidated accounts for other companies?	Yes, for banks and other credit institutions	No	Yes, for banks, insurance companies,

⁷ Luxembourg: final law for banks and insurance companies; law proposal for common law companies

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

Date: 1/07/2010

European Commission	Lithuania	Luxembourg	Malta
companies? If yes, what type of companies?			certain other supervised financial institutions and larger companies deemed significant in the local economy
3. Does your MS use the option to permit IAS in the annual accounts for other companies? If yes, what type of companies?	Yes, all types, except banks and other credit institutions, insurance companies	Yes, all types	Yes, all other than those listed below
4. Does your MS use the option to require IAS in the annual accounts for other companies? If yes, what type of companies?	Yes, for banks and other credit institutions	No	Yes, for banks, insurance companies, certain other supervised financial institutions and larger companies deemed significant in the local economy

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

		Date: 1/07/2010		
European Commission		Lithuania	Luxemburg	Malta
Article 9 of the IAS Regulation				
(a) Did your MS use the option to defer the application of IAS until 2007 for companies whose debt securities only were admitted on a regulated market of any MS?	No	Yes	No	No
(b) Did your MS use the option to defer the application of IAS until 2007 for companies whose securities were admitted to public trading in a non-member State and which, for that purpose, had been using internationally accepted standards since a financial year that started prior to the publication of the IAS Regulation in the OJ?	No	Yes	No	No
Miscellaneous				
Was earlier adoption (before 2005) of IAS allowed? If yes, for what type of companies/ from when?	Yes, for banks and other credit institutions since 1997	Derogations on an individual basis	Yes, all types of companies	

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

		Date: 1/07/2010	
European Commission	Netherlands	Poland	Portugal
<i>Status of the implementation of IAS/IFRS</i>	Final law	Final law	Final law
<i>Article 5(a) of the IAS Regulation</i> LISTED COMPANIES			
1. Does your MS use the option to permit IAS in the annual accounts for listed companies?	Yes	Yes	Yes
2. Does your MS use the option to require IAS in the annual accounts for listed companies?	No	No	Yes if the statutory accounts are the only accounts that they published to the market. Also credit institutions, other financial institutions and insurance undertakings applying local GAAP (which is consistent with IAS/IFRS), have to provide

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

Date: 1/07/2010

European Commission	Netherlands	Poland	Portugal
			additional disclosures on the changes and impacts that would result from applying IAS/IFRS
<p>Article 5(b) of the IAS Regulation</p> <p>OTHER COMPANIES</p> <p>1. Does your MS use the option to permit IAS in the consolidated accounts for other companies? If yes, what type of companies?</p>	Yes, all types	Yes, 1) companies having filed for admission to public trading; 2) any parent comp. being a subsidiary of another parent undertaking preparing its consolidated accounts in line with IAS	Yes, all types

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

		Date: 1/07/2010	
European Commission	Netherlands	Poland	Portugal
2. Does your MS use the option to require IAS in the consolidated accounts for other companies? If yes, what type of companies?	No	Yes, banks	Yes, for credit institutions and other financial institutions in 2006
3. Does your MS use the option to permit IAS in the annual accounts for other companies? If yes, what type of companies?	Yes, all types	Yes, 1) companies having filed for admission to public trading; 2) companies whose parent undertaking prepares its consolidated accounts in line with IAS	Yes, companies within the scope of consolidation of an entity who applies IAS/IFRS and also insurance undertakings not within a scope of consolidation. Credit institutions and other financial institutions are excluded
4. Does your MS use the option to require IAS in the annual accounts for other companies? If yes, what type of companies?	No	No	No

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

Date: 1/07/2010

European Commission	Netherlands	Poland	Portugal
Article 9 of the IAS Regulation (a) Did your MS use the option to defer the application of IAS until 2007 for companies whose debt securities only were admitted on a regulated market of any MS?	No	Yes	No
(b) Did your MS use the option to defer the application of IAS until 2007 for companies whose securities were admitted to public trading in a non-member State and which, for that purpose, had been using internationally accepted standards since a financial year that started prior to the publication of the IAS Regulation in the OJ?	No	No	No
Miscellaneous Was earlier adoption (before 2005) of IAS allowed? If yes, for what type of companies/ from when?	No	No	Derogations on an individual basis

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

		Date: 1/07/2010	
European Commission	Romania	Slovakia	Slovenia
<i>Status of the implementation of IAS/IFRS</i>	Final law	Final law	Final law
<i>Article 5(a) of the IAS Regulation</i> LISTED COMPANIES			
1. Does your MS use the option to permit IAS in the annual accounts for listed companies?	No, but for purposes of information only. Annual financial statements that are in line with the Accounting Regulations conform to the Fourth Directive are required in the relation with the Government authorities.	Yes, if not companies of public interest ⁸	Yes
2. Does your MS use the option to require IAS in the annual accounts for listed companies?	No	Yes, companies of public interest ⁸	No

⁸Companies of public interest mean the banks, Export- Import Bank of Slovak Republic, insurance companies excepting health insurance companies, stock exchange, Office of Slovak Assurors, Slovak Railroads, reinsurance companies, asset management companies and the companies, that at least in two consecutive reporting years fulfil at least two from following three preconditions: gross amount of asset over 5 billions of Slovak Crowns (approximately 149.000.000,- EUR), net turnover over 5 billions of Slovak Crowns and average number of employees over 2000.

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

Date: 1/07/2010		
European Commission	Romania	Slovakia
<p>Article 5(b) of the IAS Regulation</p> <p>OTHER COMPANIES</p> <p>1. Does your MS use the option to permit IAS in the consolidated accounts for other companies? If yes, what type of companies?</p>	<p>Yes. According to the Order of the minister of public finance no. 3055/2009 in force, the entities applying the Accounting Regulations conform to the European Directives, excepting the entities whose securities are admitted to trading on a regulated market, and which have the obligation to draw up consolidated financial statements, may apply in this regard either IFRS or Accounting Regulations conform to the Seventh Directive.</p>	<p>No</p>
		<p>Slovenia</p> <p>Yes, for companies, other than banks and insurance companies, if so decided by the assembly of the company, but for the minimum period of 5 years</p>

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

		Date: 1/07/2010	
European Commission	Romania	Slovakia	Slovenia
2. Does your MS use the option to require IAS in the consolidated accounts for other companies? If yes, what type of companies?	Yes, for credit institutions.	Yes, any type of companies	Yes, for banks and insurance companies
3. Does your MS use the option to permit IAS in the annual accounts for other companies? If yes, what type of companies?	No, but for purposes of information only. Financial statements that are in line with the Accounting Regulations conform to the Fourth Directive are required in the relation with the Government authorities.	Yes, for those listed companies and merchants with securities except banks, which are not those of public interest ⁸	Yes, for companies, other than banks and insurance companies, if so decided by the assembly of the company, but for the minimum period of 5 years
4. Does your MS use the option to require IAS in the annual accounts for other companies? If yes, what type of companies?	No	Yes, for all companies of public interest ⁸	Yes, for banks, insurance companies

⁸Companies of public interest mean the banks, Export-Import Bank of Slovak Republic, insurance companies excepting health insurance companies, stock exchange, Office of Slovak Assurors, Slovak Railroads, reinsurance companies, asset management companies and the companies, that at least in two consecutive reporting years fulfil at least two from following three preconditions: gross amount of asset over 5 billions of Slovak Crowns (approximately 149.000.000,- EUR), net turnover over 5 billions of Slovak Crowns and average number of employees over 2000.

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

Date: 1/07/2010

European Commission	Romania	Slovakia	Slovenia
<p>Article 9 of the IAS Regulation</p> <p>(a) Did your MS use the option to defer the application of IAS until 2007 for companies whose debt securities only were admitted on a regulated market of any MS?</p>	Yes (starting with the financial statements for 2007 financial year)	No	Yes
<p>(b) Did your MS use the option to defer the application of IAS until 2007 for companies whose securities were admitted to public trading in a non-member State and which, for that purpose, had been using internationally accepted standards since a financial year that started prior to the publication of the IAS Regulation in the OJ?</p>	Yes (starting with the financial statements for 2007 financial year)	No	No
<p>Miscellaneous</p> <p>Was earlier adoption (before 2005) of IAS allowed? If yes, for what type of companies/ from when?</p>	Yes (starting with the financial statements for 2001 financial year), but for purposes of information only.	No	No

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

		Date: 1/07/2010		
European Commission		Spain	Sweden	UK
<i>Status of the implementation of IAS/IFRS</i>		Final law	Final law	Final law
Article 5(a) of the IAS Regulation LISTED COMPANIES				
1. Does your MS use the option to permit IAS in the annual accounts for listed companies ?	No	No	No	Yes
2. Does your MS use the option to require IAS in the annual accounts for listed companies?	No	No	No	No
Article 5(b) of the IAS Regulation OTHER COMPANIES				
1. Does your MS use the option to permit IAS in the consolidated accounts for other companies? If yes, what type of companies?	Yes, all types	Yes, all types	Yes, all types	Yes, all types of companies except for the charity sector
2. Does your MS use the option to require IAS in the consolidated accounts for other companies? If yes, what type of companies?	Yes, for groups in which there is a listed company.	No	No	No

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

Date: 1/07/2010

European Commission	Spain	Sweden	UK
3. Does your MS use the option to permit IAS in the annual accounts for other companies? If yes, what type of companies?	No	No	Yes, all types of companies except for the charity sector
4. Does your MS use the option to require IAS in the annual accounts for other companies? If yes, what type of companies?	No	No	No
Article 9 of the IAS Regulation (a) Did your MS use the option to defer the application of IAS until 2007 for companies whose debt securities only were admitted on a regulated market of any MS?	Yes, except for banking sector companies	Yes	No
(b) Did your MS use the option to defer the application of IAS until 2007 for companies whose securities were admitted to public trading in a non-member State and which, for that purpose, had been using internationally accepted standards since a financial year that started prior to the	No	No	No

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

Date: 1/07/2010			
European Commission	Spain	Sweden	UK
publication of the IAS Regulation in the OJ?			
Miscellaneous Was earlier adoption (before 2005) of IAS allowed? If yes, for what type of companies/ from when?	No	No	No

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

Date: 1/07/2010

European Commission	Iceland	Liechtenstein	Norway
<i>Status of the implementation of IAS/IFRS</i>	Final law	Final law	Final law
Article 5(a) of the IAS Regulation LISTED COMPANIES			
1. Does your MS use the option to permit IAS in the annual accounts for listed companies?	Yes, for the years 2005 and 2006	Yes	Yes
2. Does your MS use the option to require IAS in the annual accounts for listed companies?	Yes, from 2007	No	No. Required for listed companies that do not prepare consolidated accounts from the financial year starting after 1. January 2011.
Article 5(b) of the IAS Regulation OTHER COMPANIES			
1. Does your MS use the option to permit IAS in the consolidated accounts for other companies? If yes, what type of companies?	Yes, for medium sized and big companies	Yes, all types	Yes, all types

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

		Date: 1/07/2010		
European Commission	Iceland	Liechtenstein	Norway	
2. Does your MS use the option to require IAS in the consolidated accounts for other companies? If yes, what type of companies?	No	No	No	
3. Does your MS use the option to permit IAS in the annual accounts for other companies? If yes, what type of companies?	Yes, for medium sized and big companies from 2005	Yes, all types	Yes, all types	
4. Does your MS use the option to require IAS in the annual accounts for other companies? If yes, what type of companies?	No. If the consolidated groups are permitted to use IAS in their consolidated accounts (according to question 1 in 5(b)), the annual accounts of each subsidiary are required to use IAS from 2007	No	No	
Article 9 of the IAS Regulation (a) Did your MS use the option to defer the application of IAS until 2007 for companies	Yes	No	Yes	

Implementation of the IAS Regulation (1606/2002) in the EU and EEA (published for information purposes only)

Date: 1/07/2010

	Iceland	Liechtenstein	Norway
<p>whose debt securities only were admitted on a regulated market of any MS?</p>			
<p>(b) Did your MS use the option to defer the application of IAS until 2007 for companies whose securities were admitted to public trading in a non-member State and which, for that purpose, had been using internationally accepted standards since a financial year that started prior to the publication of the IAS Regulation in the OJ?</p>	Yes	No	Yes
<p>Miscellaneous</p> <p>Was earlier adoption (before 2005) of IAS allowed? If yes, for what type of companies/ from when?</p>	No	31.12.2002 Yes, all types	No

Annexure 13

IP/05/1423

Brussels, 15 November 2005

Accounting Standards Commission endorses “IAS 39 Fair Value Option”

The European Commission has adopted a Regulation endorsing the amended International Accounting Standard (IAS) N° 39 on Financial Instruments: Recognition and Measurement, the “Fair Value Option”. This text was unanimously supported by Member States at the Accounting Regulatory Committee and by the European Parliament. Adoption is retroactive to 1st January 2005, so that companies will be able to apply the amended standard for their 2005 financial statements.

Internal Market and Services Commissioner Charlie McCreevy said; “I am very pleased that the Commission has been able to eliminate the ‘Fair Value carve-out’ to IAS 39. The two IAS 39 carve-outs were always intended to be exceptional and temporary. We therefore need to press on with the technical work to find a solution on the second carve out..”

Adoption of IAS 39 and the two carve-outs

On 19 November 2004, the European Commission adopted a Regulation (see IP/04/1385) endorsing International Accounting Standard (IAS) N° 39 on Financial Instruments: Recognition and Measurement, with the exception of two “carve-outs”; one relating to the Full Fair Value Option, the other to hedge accounting. These carve-outs were exceptional and intended to be temporary. The Commission carved out the provisions relating to the full fair option because of concerns expressed by the European Central Bank and prudential supervisors represented in the Basel Committee of banking supervisors. The IASB recognised these concerns and was working on the preparation of an amended IAS 39 standard with a restricted fair value option.

Adoption of IAS 39 Fair Value Option

On 16 June 2005 the IASB published an amended version of IAS 39: Recognition and Measurement - the Fair Value Option (FVO) with a restricted fair value option whose application is subject to principles and combined with extensive disclosure requirements. The amended standard benefits from wide support, from the financial services industry as well as from the European Central Bank and the Basel Committee of banking supervisors. The improved standard was unanimously approved by Member States at the Accounting Regulatory Committee on 8 July 2005 (see IP/05/884 and MEMO/05/246) and also supported by the European Parliament. The amended standard has been adopted by the Commission today and will enter into force legally after publication in the Official Journal.

Adoption is retroactive to 1st January 2005, so that companies can apply the amended standard for their 2005 final statements. The Regulation also carves back in the text that was previously carved out from the original IAS 39 standard, thus eliminating the fair value carve-out. The Commission is examining, in conjunction with Parliament and Member States, whether in the light of the adoption of the amended fair value standard, consequential amendments should also be made to the existing accounting directives.

Monitoring and review of effects of IAS 39

In accordance with the wishes of the European Parliament the Commission will review the implementation of IAS 39 and report on this to Parliament as an integral part of its evaluation of the operation of the IAS Regulation. In the meantime the Commission will monitor implementation.

Elimination of the hedge accounting carve-out

As regards the removal of the carve-out relating to certain hedge accounting provisions, the Commission again emphasises the need for the European Banking Federation and the IASB to find an

appropriate technical solution as rapidly as possible. In the interim, those individual companies wishing to apply the 'carved out' hedge accounting provisions may do so because there is no existing EU law on this issue. For such companies the second carve out plays no role.

//For further details see: [http://europa.eu.int/comm/internal market/accounting/ias en.htm](http://europa.eu.int/comm/internal_market/accounting/ias_en.htm)

Annexure 14**COMMISSION OF THE EUROPEAN
COMMUNITIES**

Brussels, 24.4.2008
COM (2008) 215 Final

**REPORT FROM THE COMMISSION TO THE
COUNCIL AND THE EUROPEAN PARLIAMENT**

**on the operation of Regulation (EC) No 1606/2002 of 19 July
2002 on the application of international accounting standards
(Text with EEA relevance)**

1. LEGAL BASIS

Article 10 of Regulation (EC) No 1606/2002 of 19 July 2002 (the "IAS Regulation")¹ requires the Commission to review the operation of the Regulation and report thereon to the European Parliament and to the Council by 1 July 2007.

2. OPERATION OF THE IAS REGULATION**2.1. Main provisions of the IAS Regulation**

The IAS Regulation places an obligation on European companies whose securities are admitted to trading on a regulated market in the EU to prepare their consolidated accounts, as of 1 January 2005, in conformity with IAS/IFRS² and SIC/IFRIC³ issued by the International Accounting Standards Board (IASB) and endorsed by the EU.

Member States may permit or require this accounting framework

1 Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, OJ L 243, 11.9.2002, p. 1

2 International Accounting Standards (IAS) were first issued by the International Accounting Standards Committee (IASC), the predecessor of the International Accounting Standards Board (IASB). The IASB issues International Financial Reporting Standards (IFRS).

3 The Standing Interpretations Committee (SIC) was the predecessor to the International Financial Reporting Interpretations Committee (IFRIC).

to be applied to the consolidated accounts of companies whose securities are not admitted to trading on a regulated market in the EU and/or to annual (individual) accounts regardless of whether the company is admitted to trading on a regulated market in the EU. The use of the options in the Article 5 of the IAS Regulation by Member States is described in the table below⁴:

Use of options in the IAS Regulation by Member States

	Companies	Publicly traded companies		Non-publicly traded companies	
		Consolidated	Legal entity	Consolidated	Legal entity
Austria	All	Required	Not permitted	Permitted	Not permitted
Belgium	Credit institutions	Required	Not permitted	Required	Not permitted
	Other	Required	Not permitted	Permitted	Not permitted
Cyprus	All	Required	Required	Required	Required
Czech Republic	All	Required	Required	Permitted	Not permitted
Denmark	All	Required	Permitted	Permitted	Permitted
Estonia	Credit institutions, insurance companies, financial and mixed financial holding companies and investment companies	Required	Required	Required	Required
	Other	Required	Required	Permitted	Permitted
Finland	Insurance	Required	Not permitted	Required	Not permitted
	Other	Required	Permitted	Permitted	Permitted
France	All	Required	Not permitted	Permitted	Not permitted
Germany	All	Required	Not permitted	Permitted	Not permitted
Greece	All	Required	Required	Permitted	Permitted
Hungary	All	Required	Not permitted	Permitted	Not permitted
Ireland	All	Required	Permitted	Permitted	Permitted
Italy	Supervised financial companies, companies with financial instruments widely distributed among the public	Required	Required	Required	Required
	Insurance companies	Required	Not permitted	Required	Not permitted
	Other	Required	Required	Permitted	Permitted
Latvia	Banks, insurance companies and other financial institutions	Required	Required	Required	Required

⁴ Information taken from a Commission requested study made by the Institute of Chartered Accountants in England and Wales "EU Implementation of IFRS and the Fair Value Directive", 2007, page 24.

	Companies	Publicly traded companies		Non-publicly traded companies	
		Consolidated	Legal entity	Consolidated	Legal entity
	Other	Required	Permitted*	Permitted	Not permitted
Lithuania	Banks and controlled financial institutions	Required	Required	Required	Required
	Other	Required	Required	Not permitted	Not permitted
Luxembourg	All	Required	Permitted	Permitted	Permitted
Malta	All	Required	Required	Required	Required
Netherlands	All	Required	Permitted	Permitted	Permitted
Poland	Banks	Required	Not permitted	Required	Not permitted
	Pending admission to regulated market	N/A	N/A	Permitted	Permitted
	Subsidiary in IFRS group	N/A	N/A	Permitted	Permitted
	Other	Required	Permitted	Not permitted	Not permitted
Portugal	Banks and financial institutions	Required	Not permitted	Permitted	Not permitted
	Subsidiary in IFRS group	N/A	N/A	Permitted	Permitted
	Other	Required	Permitted	Permitted	Not permitted
Slovakia	All	Required	Not permitted	Required	Not permitted
Slovenia	Banks and insurance companies	Required	Required	Required	Required
	Other	Required	Permitted	Permitted	Permitted
Spain	All	Required	Not permitted	Permitted	Not permitted
Sweden	All	Required	Not permitted	Permitted	Not permitted
United Kingdom	All	Required	Permitted	Permitted	Permitted

* Latvia: companies listed on the official list of the Riga Stock Exchange are required to prepare IFRS-EU legal entity accounts for listing purposes only.

Member States were also allowed to postpone application of this framework to 1 January 2007 for companies which have issued only debt securities admitted to trading on a regulated market in the EU and for companies whose securities are admitted to trading outside the EU and which, for that purpose, had been using internationally accepted standards before the IAS Regulation was published.

Only international accounting standards and interpretations adopted and issued by the IASB and its predecessor the International Accounting Standards Committee (IASC) are endorsed for the purposes of the IAS Regulation. They are endorsed by the

Commission following a committee procedure. First the Commission should receive technical endorsement advice from the European Financial Reporting Advisory Group (EFRAG)⁵, then an opinion from the Standards Advisory Review Group (SARG)⁶ assessing whether EFRAG's technical advice is objective and well-balanced. Following this, the Commission decides whether to propose the standard/interpretation for endorsement. The endorsement vote in the Accounting Regulatory Committee (ARC)⁷ is followed by confirmation by the European Parliament. If all these steps go well, the Commission decides whether to endorse the standard/interpretation and publish it in the Official Journal.

2.2. Main sources of input for the report

The Commission has drawn on input from various sources for this report. Member States have been consulted – within the Accounting Regulatory Committee – on the main points covered. The Roundtable⁸ for the consistent application of IFRS in the EU was another valuable source of input. The Commission Services concerned have also kept regular contact with stakeholders during the introduction of IFRS in the EU.

In order to have a full technical analysis of implementation of IFRS, the Commission Services have also considered a number of reports on the 2005 IFRS implementation prepared by different organisations and companies⁹.

This Commission report also takes into account a report by the Committee of European Securities Regulators (CESR) entitled "CESR's review of the implementation and enforcement of IFRS in

5 For further information see: efrag.org

6 For further information see: http://ec.europa.eu/internal_market/accounting/ias_en.htm#standards

7 For further information see: http://ec.europa.eu/internal_market/accounting/committees_en.htm#arc

8 For further information see: http://ec.europa.eu/internal_market/accounting/ias_en.htm#060609

9 In particular the report mentioned in footnote 4. This report contains an exhaustive listing of other studies made.

the EU¹⁰ and results from other studies and literature available on initial application of IFRS in the EU.

2.3. Effective use of IFRS in the EU

In 2005 the number of IFRS adopters whose securities were admitted to trading on a regulated market in the EU stood at 7 365, of which 5 534 were equity issuers.

Extract from the CESR report, Appendix 1: Number of IFRS adopters listed on a regulated market in the EU by country (equity issuers and bond issuers)

CESR Members	Equity issuers	Bond issuers ¹¹	Total
Austria	72	11	83
Belgium	144	2	146
Bulgaria	369	60	429
Cyprus	141	0	141
Czech Rep	66	24	90
Denmark	140	8	148
Estonia	16	6	22
Finland	135	15	150
France	680	200	880
Germany	768	172	940
Greece	356	0	356
Hungary	34	1	35
Iceland	23	8	31
Ireland	43	40	83
Italy	288	65	353

¹⁰ This review was published as document CESR/07-352 on 7 November 2007 and is available on the CESR website:

<http://www.cesreu.org>.

[index.php?page=contenu_search_res&doonly=all&searchdatefromday=1&search_datefrommonth=1&searchdatefromyear=1970&search_datetoday=29&searchdatetomonth=2&searchdatetoyear=2008&searchkeyword=07-352](http://www.cesreu.org/index.php?page=contenu_search_res&doonly=all&searchdatefromday=1&search_datefrommonth=1&searchdatefromyear=1970&search_datetoday=29&searchdatetomonth=2&searchdatetoyear=2008&searchkeyword=07-352)

¹¹ Some bond issuers may have decided to postpone application of IFRS until 2007 in accordance with Article 9 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council.

Latvia	13	4	17
Lithuania	43	4	47
Luxembourg	35	200	235
Malta	15	19	34
Norway	188	0	188
Poland	197	0	197
Portugal	50	28	78
Romania	N/C	N/C	N/C
Slovakia	N/C	N/C	N/C
Slovenia	60	6	66
Spain	190	120	310
Sweden	350	35	385
NL	165	25	190
UK	953	778	1731
TOTAL	5534	1831	7365
NC: answer not provided			

By 31 December 2005 the following standards and interpretations had been endorsed: IAS 1 to 41, IFRS 1 to 6, SIC 7 to 32 and IFRIC 1 to 5, excluding those superseded or abolished before or after that date¹². Additional standards and interpretations were endorsed in 2006 (IFRS 7 and IFRIC 6 to 9) and 2007 (IFRS 8 and IFRIC 10 and 11), along with amendments to previously endorsed standards. Some standards (IFRS 6), amendments to standards (on IAS 39) and interpretations (IFRIC 4 and 5) endorsed in 2005 could be applied as from 1 January 2006. It was also possible to apply IFRS 7, IFRIC 6 and amendments to some standards endorsed on 11 January 2006 to 2005 financial statements.

CESR's members have undertaken a full review of 1 410 companies' 2005 IFRS financial statements and a thematic review

¹² IAS 3 to 6, IAS 9, IAS 13 to 15, IAS 22, IAS 25, IAS 30, IAS 35, IFRIC 3, SIC 1 to 6, SIC 8 and 9, SIC 11, SIC 14, SIC 16 to 20, SIC 22 to 24, SIC 26, SIC 28, SIC 30 and SIC 33.

of an additional 920 companies' 2005 IFRS financial statements. They have set up a database in which 85 enforcement decisions had been entered by the end of August 2007.

2.4. Consistent application of IFRS in the EU

Based on the information gathered from the sources mentioned in Section 2.2, the Commission has analysed the consistency of application of the endorsed standards/interpretations in the EU for the financial year 2005. The Commission reached the following conclusions:

- Overall, application of IFRS has been a challenge for all stakeholders, but it has been achieved without disrupting markets or reporting cycles. This is a major achievement, bearing in mind that implementation of IFRS has meant a general overhaul of the accounting framework in the EU for companies falling under the scope of the IAS Regulation. The switch to IFRS has required hard work and significant resources from the companies concerned, in particular from smaller listed companies¹³.
- There is a general perception among preparers, auditors, investors and enforcers that application of IFRS has improved the comparability and quality of financial reporting and has led to greater transparency.
- The options to extend the scope of the IAS Regulation have been implemented in different ways in different Member States (see above 2.1), depending on their individual economic and legal environments. This flexible approach has allowed implementation tailored to the characteristics and peculiarities of the accounting environment in each Member State, in particular the links to fiscal rules and company law. Compulsory use of IFRS does not appear to

¹³ Analysis of implementation costs and subsequent recurrent application costs in the ICAEW study (see footnote 4) has shown that they appear higher for smaller companies (turnover below • 500m) amounting respectively to 0,31% and 0,06% of their turnover, which remains an acceptable level. Smaller quoted companies have also faced more difficulties in applying IFRS because of limited resources and a lack of prior experience of IFRS.

have been widely extended to non-listed companies and/or to individual accounts.

- Most stakeholders believe that the understandability of financial statements has generally improved, except for certain areas, where there seems to be room for improvement, notably on financial instruments, business combinations and sharebased payments.
- IFRS accounts are still influenced by national accounting traditions. One reason for this is the lack of experience and accounting doctrine. In practice, introduction of this principles-based accounting approach, requiring considerable professional judgment, has been a challenge in some Member States. However, as preparers and auditors become more familiar with IFRS, initial application problems should be resolved.
- The IFRS recognition and measurement provisions appear to have been applied more consistently and clearly than certain disclosure requirements. In particular, there is room for further improvements in disclosure of general accounting policies. Security regulators have taken note of these issues, but have concluded that they have not undermined the general level of compliance with IFRS.
- Options allowed by IFRS, including those related to employee benefits, borrowing costs and joint ventures, have been used in diverse ways by companies. Options in IFRS for early application have also been widely used. However, options to widen application of fair value measurement have not been extensively used and use of the carve-out in IAS 39 is limited to very few banks. Enforcers have expressed concern and wish the number of options available in IFRS to be reduced in the future.
- Specific concerns have been identified by the CESR in certain areas, such as business combinations (goodwill, as well as *de facto* and common control), financial instruments (impairment), non-current assets, disclosure on accounting

policies, estimates and assumptions. Enforcers also recommend improving disclosure relating to pension schemes and share-based payments plus further streamlining of the balance sheet and income statement formats.

- Few technical accounting issues have been referred to the Roundtable for the consistent application of IFRS in the EU. The number of issues sent to IFRIC for interpretation has also decreased. This seems to indicate that the principles-based approach has generally been working well.
- Academics have started to analyse the impact of introduction of IFRS on securities markets, but it is still too early to give conclusive results. However, preliminary studies indicate that there is an overall reduction in the cost of capital for companies supplying IFRS accounts.

2.5. Functioning of the endorsement process and related administrative requirements

This part of the report looks at how the endorsement process has been working, including technical analysis, preparation of political decisions and flanking administrative and practical activities. The report covers mainly the period up to 1 July 2007, but also other subsequent elements have been added for completeness.

The Commission has the following comments to make on different aspects of the endorsement process:

- **Technical analysis and endorsement advice:** The European Financial Reporting Advisory Group (EFRAG) has supplied timely, high-quality analyses and endorsement advice to the Commission. The endorsement advice has provided the Accounting Regulatory Committee and the European Parliament with the technical input needed for their decisions. All endorsement advice, except in the case of IAS 39, has expressed a clear view on whether the standard concerned should be endorsed. Over time EFRAG has improved the structure of its advice, which now regularly provides a basis for conclusions. EFRAG's Technical Expert Group (TEG) holds a three-day meeting every month.

- **Review by the Standards Advisory Review Group (SARG):** SARG was set up to ensure that the endorsement advice received from EFRAG was well-balanced and neutral. SARG has put in place efficient working procedures and delivered timely assessments. The group held three meetings during 2007.
- **The endorsement and committee procedures:** The endorsement procedure has been working well, and most standards and interpretations have been endorsed in good time. Endorsement of standards/interpretations in accordance with the IAS Regulation has followed the current committee procedures¹⁴. These procedures will be changed¹⁵, and more emphasis will be put on scrutiny by Parliament and the Council. Parliament closely follows developments in the field of accounting and participates actively in the endorsement process. Parliament has also requested that analysis of the effects should be introduced in the endorsement process.
- **Need to analyse the effects of introducing new standards and interpretations:** Impact assessments have been an integral part of the general legislative process at EU level and in Member States for many years. The Commission attaches such assessments to all new legislative proposals. The need to analyse the effects of accounting standards is becoming apparent. Impact assessments or effect analyses should be carried out at an early stage in the standard-setting process, and the Commission has therefore asked the IASB to perform such analyses as part of the process of preparing new standards. The International Accounting Standards Committee Foundation (IASCF)¹⁶ has committed

14 Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ L 184 of 17 July 1999, page 23.

15 Council Decision 2006/512/EC of 17 July 2006 amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ L 200 of 22 July 2006, page 11.

The latest stage: Regulation of the European Parliament and of the Council amending Regulation (EC) No. 1606/2002 on the application of international accounting standards, as regards the implementing powers conferred on the Commission has been adopted and published in the OJ on 9 April 2008.

16 The IASCF is the foundation behind the IASB.

itself to doing this for future standards. Until then, the Commission – after discussion with the European Parliament – has agreed that such analyses of effects for upcoming major standards and interpretations should be performed at EU level. The Commission Services have finalised an effects study for IFRS 8 (“Operating Segments”) and will prepare similar analyses for IFRIC 12 (“Service Concession Arrangements”) and IAS 23 (“Borrowing Costs”). For subsequent upcoming standards, EFRAG – in close cooperation with the Commission Services – will contribute to such analyses as part of preparing its endorsement advice.

- ***Endorsements and “carve-outs”:*** The basic idea behind the IAS Regulation is that IFRS and IFRIC should be of high quality and obtain such general support that they can be endorsed in the EU. All standards and interpretations, except limited parts of IAS 39, have been endorsed. At the time of endorsement of IAS 39, it was expressly stated that the IAS 39 carve-out should be limited in time and in scope. Concerning a first carve-out relating to the fair value option, after contacts with banking supervisors and central banks the IASB quickly presented a new solution which was subsequently endorsed in the EU. The second carve-out concerning certain hedging rules has been more difficult to resolve. Despite hard work in the IASB and in the banking industry, no solution has been found yet. The Commission has urged both sides to present new solutions to this issue.
- ***Consolidation and translation of IFRS:*** Each individual IFRS is endorsed in the EU by a regulation. This means that no full consolidated version of the endorsed IFRS is available. Furthermore, the quality of some of the language versions of endorsed IFRS has been questioned by Member States and stakeholders. To address these concerns, the Commission Services responsible have started a major consolidation project coupled with a detailed language review of all endorsed standards and interpretations.

- ***The overall length of the endorsement procedure:*** The average time between publication by the IASB and adoption of an endorsed standard by the EU has been about eight to ten months. The decision to perform effect analyses at EU level is likely to add about six more months to this process. However, in the future such analyses will become part of the IASB standard-setting process, in which case endorsement by the EU should remain to eight to ten months. In urgent cases, Member States and Parliament have shown flexibility in order to allow quick endorsement decisions (this was the case, for instance, for IFRS 7 – “Financial Instruments: Disclosure”). There is a common interest in making the endorsement process as expedient as possible. Concerning IFRS 7 as well as IFRS 8, a number of listed companies approached the Commission to request swift endorsement which would allow early application of these standards.

3. Conclusions

The first year of mandatory application of IFRS in the EU has been generally positive, even if the regulatory changes and lack of experience have posed a challenge for first-time appliers. The value of the accounting information supplied has increased and IFRS have generally been applied consistently in the EU. The level of consistency between IFRS accounts is likely to increase over time as preparers and auditors gain experience with applying the new accounting framework.

The EU endorsement process per se ensures technical quality, political legitimacy and relevance to business. The system has been working well and standards have been endorsed in good time. The endorsement system is flexible and has already been amended – inclusion of SARG, new working methods in EFRAG, new rules on committee procedures, effect studies, etc. The net result has produced an efficient and legitimate structure.

In order to maintain the current high acceptance of IFRS in the EU, it is important that stakeholders feel that the work programme of the IASB is addressing the right issues and that future standards/interpretations will provide suitable accounting solutions. Some

stakeholders have expressed doubts about some of the accounting projects currently being prepared by the IASB. It is therefore crucial that EU institutions, Member States and stakeholders become involved in the standard-setting process as early as possible, as this enhances the quality of the work and increases the legitimacy and acceptance of future standards/interpretations. The way the IASB undertakes impact assessment in future will also be monitored carefully.

In order to ensure the overall quality of future IFRS and IFRIC it is also important that the IASB/IASCF has suitable governance structure and secure funding. The Commission Services regularly assess the governance and funding of the IASB/IASCF and publish reports that can be downloaded from the Commission website¹⁷.

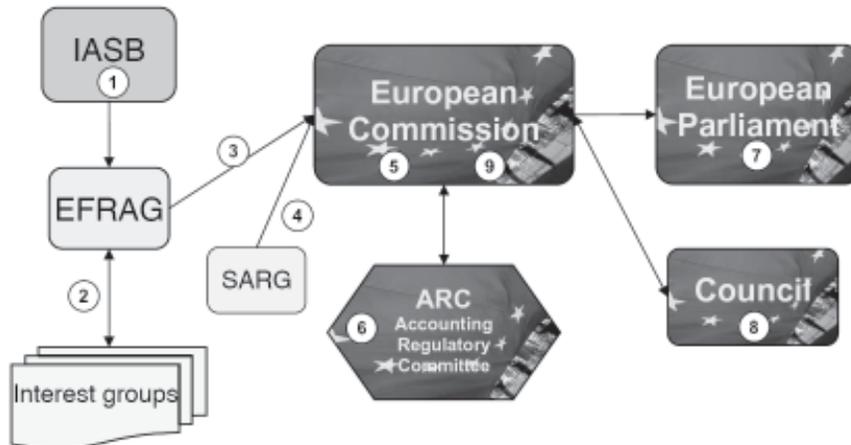
¹⁷ For further information see: http://ec.europa.eu/internal_market/accounting/ias_en.htm#070112

Annexure 15

International Accounting Standards and Interpretations endorsement process in the EU.

The endorsement mechanism is a process run according to the IAS Regulation (Regulation (EC) No. 1606/2002)¹.

The concrete steps of the endorsement process can be described as follows:



- (1) The IASB (The International Accounting Standards Board) issues a standard.
- (2) EFRAG (the European Financial Reporting Advisory Group) holds consultations with interest groups
- (3) EFRAG delivers its advice to the Commission whether the standard meets the criteria of endorsement. The criteria examined are set forth in Article 3(2) in the IAS Regulation (not contrary to the true and fair view principle set out in the 4th and 7th Company Law Directives², conducive to the European public good, understandability, relevance, reliability and comparability). EFRAG also prepares in cooperation

¹ Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002, Official Journal L 243, 11 September 2002

with the Commission an effect study about the potential economic effects of the given standard's application in the EU. EFRAG is mentioned in recital (10) of the IAS Regulation.

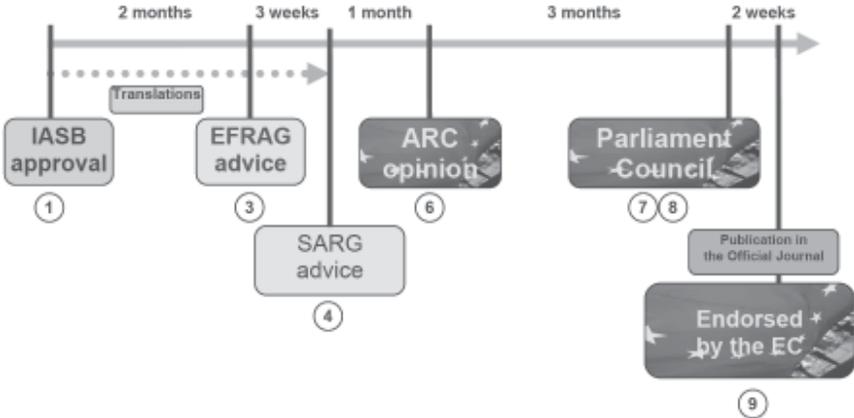
- (4) SARG (the Standards Advice Review Group) issues its opinion whether EFRAG's endorsement advice is well-balanced and objective. The legal basis of this body and its opinion is Commission Decision No. 2006/505/EC³.
- (5) Based on the advice of EFRAG and the opinion of SARG, the Commission prepares a draft endorsement Regulation. The adoption of the Regulation follows a regulatory comitology procedure with scrutiny, in accordance with Articles 5a and 8 of the Council Decision 1999/468. This means in practice that:
 - (6) ARC (Accounting Regulatory Committee), set up in accordance with Article 6 of the IAS Regulation votes on the Commission proposal. The qualified majority rule applies. If the vote is favourable (which is the case for the vast majority of the standards to be endorsed),
 - (7) The European Parliament
and
 - (8) The Council of the European Union have 3 months to oppose the adoption of the draft Regulation by the Commission.
 - (9) If the European Parliament and the Council give their favourable opinion on the adoption or the 3 months elapsed without opposition from their side, the Commission adopts the draft Regulation. After adoption, it is published in the

² 78/660/EEC Fourth Directive on the annual accounts of certain types of companies and 83/349/EEC Seventh Directive on consolidated accounts, respectively

³ 2006/505/EC Commission Decision of 14 July 2006 setting up a Standards Advice Review Group to advise the Commission on the objectivity and neutrality of the European Financial Reporting Advisory Group's (EFRAG's) opinions

Official Journal and enters into force on the day laid down in the Regulation itself.

The estimated timing of each step is as follows:



Annexure 16

COMMISSION DECISION

of 14 July 2006

setting up a Standards Advice Review Group to advise the Commission on the objectivity and neutrality of the European Financial Reporting Advisory Group's (EFRAG's) opinions

(2006/505/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Whereas:

(1) The high level of transparency and comparability of financial reporting for all publicly traded Community companies is necessary for building an integrated capital market which operates effectively, smoothly and efficiently.

(2) In order to contribute to a better functioning of the internal market Regulation (EC) No 1606/2002 of the European Parliament and of the Council⁽¹⁾ provides that the companies listed on regulated market are required to prepare their consolidated accounts in accordance with a single set of global accounting standards, commonly referred to as International Financial Reporting Standards (IFRS). The Regulation, in its recital 10, foresees the creation of an accounting technical committee to provide support and expertise to the Commission in the assessment of international accounting standards.

(3) The European Financial Reporting Advisory Group (EFRAG) was founded in March 2001 by the organisations

⁽¹⁾ OJ L 243, 11.9.2002, p. 1.

representing preparers, users and accountancy professions involved in the financial reporting process; EFRAG provides opinions on whether the standard or interpretation to be endorsed complies with the Community law and, in particular, the requirements of Regulation (EC) No 1606/2002 as regards understandability, relevance, reliability and comparability as well as the true and fair principle as set out in Council Directives 78/660/EEC⁽²⁾ and 83/349/EEC⁽³⁾.

(4) As EFRAG is a private body it is important for the high quality, transparency and credibility of the endorsement process to establish appropriate institutional infrastructure ensuring that its endorsement advice is objective and well-balanced.

(5) In this context, the Commission considers that a Standards Advice Review Group composed of independent experts and high level representatives from National Standard Setters should therefore be established to serve as a body to reflect on the endorsement advice submitted by the EFRAG with a view to assessing whether its content is well-balanced and objective,

HAS ADOPTED THIS DECISION:

Article 1

A group of non-governmental experts in accounting, hereinafter referred to as 'the group', is hereby established.

Article 2

Task

The role of the group shall be to advise the Commission, before it takes a decision on endorsement, on whether EFRAG's opinions on endorsement of International Financial Reporting Standards (IFRS) and Interpretations by the International

⁽²⁾ OJ L 222, 14.8.1978, p. 11. Directive as last amended by Directive 2006/43/EC of the European Parliament and of the Council (OJ L 157, 9.6.2006, p. 87).

⁽³⁾ OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2006/43/EC.

Financial Reporting Committee (IFRICs) are well-balanced and objective.

Article 3

Membership — Appointment

1. The group shall comprise of maximum seven members.
2. The Commission shall appoint the members of the group from independent experts whose experience and competence in the accounting area, in particular in financial reporting issues, are widely recognised at Community level. The members shall be selected on the basis of eligible proposals submitted following the call for applications published on the website of DG Internal Market and Services.
3. The Commission will take the following criteria into account when assessing applications:
 - proven competence and high level technical experience, including at European and/or international level, in the accounting area, in particular in financial reporting issues,
 - independence,
 - the need for balanced composition in terms of geographical origin, gender ⁽¹⁾, the functions and size of businesses or bodies concerned.
4. The members shall be appointed in a personal capacity and shall advise the Commission independently of any outside influence. The members shall not participate in the work of EFRAG either before the appointment to the group or during their term of office.
5. Members shall each year sign an undertaking to act in the public interest and a declaration indicating the absence or existence of any interest which may undermine their independence and objectivity.

⁽¹⁾ Commission Decision 2000/407/EC of 19 June 2000 relating to gender balance within the committees and expert groups established by it (OJ L 154, 27.6.2000, p. 34).

6. Members of the group are appointed for a 3-year renewable term of office. The rules of procedure of the group may foresee partial replacement of the members every year in groups of 2 or 3.

7. In the event of resignation of a member of the group during the term of office as well as when a member is no longer capable of contributing effectively to the group's deliberations or does not comply with the conditions set out in paragraphs 3 and 4, or Article 287 of the Treaty, the Commission shall appoint a new member of the group in accordance with paragraphs 3 and 4 for the remainder of his/her term of office.

8. The names of members appointed by the Commission shall be published on the Internet website of the DG Internal Market and Services. The names of members shall be collected, processed and published in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽²⁾.

Article 4 **Operation**

1. The group shall be chaired by one of its members. The chairman will be selected by a simple majority for a period of one year.

2. The representative of the Commission will assist in the meetings of the group and may take part in the debates. Other Commission officials interested in the matters discussed by the group may also attend its meetings.

3. Upon receiving EFRAG's opinion on endorsement of IFRS or IFRICs, the group shall give its advice on whether the opinion of EFRAG is objective and well-balanced.

4. The group shall deliver its advice to the Commission within a short time, which should not be longer than three weeks from the date of receiving EFRAG's opinion. In exceptional circumstances, in particular when the issue is complex, this period may be extended to four weeks.

⁽²⁾ OJ L 8, 12.1.2001, p. 1.

5. The final advice of the group shall be published on the Internet website of the Commission.
6. When the group identifies a particular concern, the chairman of the group shall enter into a dialog with EFRAG with a view to resolve the matter, before the group issues its final advice. The Commission may assist in the discussions between the group and EFRAG with the aim to establish a balanced solution.
7. The Chairman of Technical Expert Group (TEG) of EFRAG may attend the meetings of the group as an observer. The chairman or the representative of the Commission may also ask other experts or observers with specific competence on a subject on the agenda to participate in the group's deliberations if this is useful and/or necessary.
8. Information obtained by participating in the deliberations of the group shall not be divulged if, in the opinion of the Commission, that information relates to confidential matters.
9. The group shall adopt its rules of procedure on the basis of the standard rules of procedure adopted by the Commission⁽¹⁾.
10. In addition to documents mentioned in this Article, the Commission may publish on the Internet, in the original language of the document concerned, any summary, conclusion, or partial conclusion or working document of the group.

Article 5

Meeting expenses

The Commission shall reimburse travel and, where appropriate, subsistence expenses for members, experts and observers in connection with the group's activities in accordance with the Commission's rules on the compensation of external experts.

The members, experts and observers shall not be remunerated for the services they render.

¹ Annex III of document SEC(2005) 1004.

Meeting expenses are reimbursed within the limits of the annual budget allocated to the group by the responsible Commission services.

Article 6

Applicability

The decision shall take effect on the day of its publication in the *Official Journal of the European Union*.

It shall apply until 13 July 2009. The Commission shall decide on a possible extension before that date.

Done at Brussels, 14 July 2006.

For the Commission
Charlie McCREEVY
Member of the Commission

Annexure 17

This document is meant purely as a documentation tool and the institutions do not assume any liability for its contents

COUNCIL DECISION

of 28 June 1999

laying down the procedures for the exercise of implementing powers conferred on the Commission (*)

(1999/468/EC)

(OJL 184, 17.7.1999, p. 23)

Amended by:

		No	Official Journal page	date
M1	Council Decision 2006/512/EC, of 17 July 2006	L 200	11	22.7.2006

(*) Three statements in the Council minutes relating to this Decision are set out in OJC203 of 17 June, page 1.

COUNCIL DECISION

of 28 June 1999

laying down the procedures for the exercise of implementing powers conferred on the Commission (*)

(1999/468/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the third indent of Article 202 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

- (1) in the instruments which it adopts, the Council has to confer on the Commission powers for the implementation of the rules which the Council lays down; the Council may impose certain requirements in respect of the exercise of these powers; it may also reserve to itself the right, in specific and substantiated cases, to exercise directly implementing powers;
- (2) the Council adopted Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽³⁾; that Decision has provided for a limited number of procedures for the exercise of such powers;
- (3) declaration No 31 annexed to the Final Act of the Intergovernmental Conference which adopted the Amsterdam Treaty calls on the Commission to submit to the Council a proposal amending Decision 87/373/EEC;

(*) Three statements in the Council minutes relating to this Decision are set out in OJ C 203 of 17 June, page 1.

⁽¹⁾ OJC279, 8.9.1998, p. 5.

⁽²⁾ Opinion delivered on 6 May 1999 (not yet published in the Official Journal).

⁽³⁾ OJL 197, 18.7.1987, p. 33.

- (4) for reasons of clarity, rather than amending Decision 87/373/EEC, it has been considered more appropriate to replace that Decision by a new Decision and, therefore, to repeal Decision 87/373/EEC;
- (5) the first purpose of this Decision is, with a view to achieving greater consistency and predictability in the choice of type of committee, to provide for criteria relating to the choice of committee procedures, it being understood that such criteria are of a non-binding nature ▲M1 with the exception of those governing the regulatory procedure with scrutiny ▲;
- (6) in this regard, the management procedure should be followed as regards management measures such as those relating to the application of the common agricultural and common fisheries policies or to the implementation of programmes with substantial budgetary implications; such management measures should be taken by the Commission by a procedure ensuring decision-making within suitable periods; however, where non-urgent measures are referred to the Council, the Commission should exercise its discretion to defer application of the measures;
- (7) the regulatory procedure should be followed as regards measures of general scope designed to apply essential provisions of basic instruments, including measures concerning the protection of the health or safety of humans, animals or plants, as well as measures designed to adapt or update certain non-essential provisions of a basic instrument; such implementing measures should be adopted by an effective procedure which complies in full with the Commission's right of initiative in legislative matters;
- (7a) it is necessary to follow the regulatory procedure with scrutiny as regards measures of general scope which seek to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty, *inter alia* by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements. This procedure should enable the two arms of the legislative authority to scrutinise such measures before they are adopted. The essential elements

of a legislative act may only be amended by the legislator on the basis of the Treaty;

- (8) the advisory procedure should be followed in any case in which it is considered to be the most appropriate; the advisory procedure will continue to be used in those cases where it currently applies;
- (9) the second purpose of this Decision is to simplify the requirements for the exercise of implementing powers conferred on the Commission as well as to improve the involvement of the European Parliament in those cases where the basic instrument conferring implementation powers on the Commission was adopted in accordance with the procedure laid down in Article 251 of the Treaty; it has been accordingly considered appropriate to reduce the number of procedures as well as to adjust them in line with the respective powers of the institutions involved and notably to give the European Parliament an opportunity to have its views taken into consideration by, respectively, the Commission or the Council in cases where it considers that, respectively, a draft measure submitted to a committee or a proposal submitted to the Council under the regulatory procedure exceeds the implementing powers provided for in the basic instrument;
- (10) the third purpose of this Decision is to improve information to the European Parliament by providing that the Commission should inform it on a regular basis of committee proceedings, that the Commission should transmit to it documents related to activities of committees and inform it whenever the Commission transmits to the Council measures or proposals for measures to be taken; particular attention will be paid to the provision of information to the European Parliament on the proceedings of committees in the framework of the regulatory procedure with scrutiny, so as to ensure that the European Parliament takes a decision within the stipulated deadline;
- (11) the fourth purpose of this Decision is to improve information to the public concerning committee procedures and therefore to make applicable to committees the principles and

conditions on public access to documents applicable to the Commission, to provide for a list of all committees which assist the Commission in the exercise of implementing powers and for an annual report on the working of committees to be published as well as to provide for all references to documents related to committees which have been transmitted to the European Parliament to be made public in a register;

- (12) the specific committee procedures created for the implementation of the common commercial policy and the competition rules laid down by the Treaties that are not currently based upon Decision 87/373/EEC are not in any way affected by this Decision,

HAS DECIDED AS FOLLOWS:

Article 1

Other than in specific and substantiated cases where the basic instrument reserves to the Council the right to exercise directly certain implementing powers itself, such powers shall be conferred on the Commission in accordance with the relevant provisions in the basic instrument. These provisions shall stipulate the essential elements of the powers thus conferred.

Where the basic instrument imposes specific procedural requirements for the adoption of implementing measures, such requirements shall be in conformity with the procedures provided for by Articles 3, 4, 5 **M1**, 5a and 6.

Article 2

MI 1. Without prejudice to paragraph 2, the choice of procedural methods for the adoption of implementing measures shall be guided by the following criteria:

- (a) management measures, such as those relating to the application of the common agricultural and common fisheries policies, or to the implementation of programmes with substantial budgetary implications, should be adopted by use of the management procedure;

- (b) measures of general scope designed to apply essential provisions of basic instruments, including measures concerning the protection of the health or safety of humans, animals or plants, should be adopted by use of the regulatory procedure; where a basic instrument stipulates that certain non-essential provisions of the instrument may be adapted or updated by way of implementing procedures, such measures should be adopted by use of the regulatory procedure;
- (c) without prejudice to points (a) and (b), the advisory procedure shall be used in any case in which it is considered to be the most appropriate.

2. Where a basic instrument, adopted in accordance with the procedure referred to in Article 251 of the Treaty, provides for the adoption of measures of general scope designed to amend non-essential elements of that instrument, *inter alia* by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements, those measures shall be adopted in accordance with the regulatory procedure with scrutiny.

Article 3

Advisory procedure

1. The Commission shall be assisted by an advisory committee composed of the representatives of the Member States and chaired by the representative of the Commission.
2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time-limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.
3. The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.
4. The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which the opinion has been taken into account.

*Article 4***Management procedure**

1. The Commission shall be assisted by a management committee composed of the representatives of the Member States and chaired by the representative of the Commission.
2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time-limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 205(2) and (4) of the Treaty, in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.
3. The Commission shall, without prejudice to Article 8, adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it has decided on for a period to be laid down in each basic instrument but which shall in no case exceed three months from the date of such communication.
4. The Council, acting by qualified majority, may take a different decision within the period provided for by paragraph 3.

*Article 5***Regulatory procedure**

1. The Commission shall be assisted by a regulatory committee composed of the representatives of the Member States and chaired by the representative of the Commission.
2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time-limit which the chairman may lay down according to the urgency of the matter.

The opinion shall be delivered by the majority laid down in Article 205(2) and (4) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. The Commission shall, without prejudice to Article 8, adopt the measures envisaged if they are in accordance with the opinion of the committee.

4. If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken and shall inform the European Parliament.

5. If the European Parliament considers that a proposal submitted by the Commission pursuant to a basic instrument adopted in accordance with the procedure laid down in Article 251 of the Treaty exceeds the implementing powers provided for in that basic instrument, it shall inform the Council of its position.

6. The Council may, where appropriate in view of any such position, act by qualified majority on the proposal, within a period to be laid down in each basic instrument but which shall in no case exceed three months from the date of referral to the Council.

If within that period the Council has indicated by qualified majority that it opposes the proposal, the Commission shall re-examine it. It may submit an amended proposal to the Council, re-submit its proposal or present a legislative proposal on the basis of the Treaty.

If on the expiry of that period the Council has neither adopted the proposed implementing act nor indicated its opposition to the proposal for implementing measures, the proposed implementing act shall be adopted by the Commission.

*Article 5a***Regulatory procedure with scrutiny**

1. The Commission shall be assisted by a Regulatory Procedure with Scrutiny Committee composed of the representatives of the Member States and chaired by the representative of the Commission.
2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time-limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 205(2) and (4) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.
3. If the measures envisaged by the Commission are in accordance with the opinion of the Committee, the following procedure shall apply:
 - (a) the Commission shall without delay submit the draft measures for scrutiny by the European Parliament and the Council;
 - (b) the European Parliament, acting by a majority of its component members, or the Council, acting by a qualified majority, may oppose the adoption of the said draft by the Commission, justifying their opposition by indicating that the draft measures proposed by the Commission exceed the implementing powers provided for in the basic instrument or that the draft is not compatible with the aim or the content of the basic instrument or does not respect the principles of subsidiarity or proportionality;
 - (c) if, within three months from the date of referral to them, the European Parliament or the Council opposes the draft measures, the latter shall not be adopted by the Commission. In that event, the Commission may submit to the Committee

an amended draft of the measures or present a legislative proposal on the basis of the Treaty;

- (d) if, on expiry of that period, neither the European Parliament nor the Council has opposed the draft measures, the latter shall be adopted by the Commission.

4. If the measures envisaged by the Commission are not in accordance with the opinion of the Committee, or if no opinion is delivered, the following procedure shall apply:

- (a) the Commission shall without delay submit a proposal relating to the measures to be taken to the Council and shall forward it to the European Parliament at the same time;
- (b) the Council shall act on the proposal by a qualified majority within two months from the date of referral to it;
- (c) if, within that period, the Council opposes the proposed measures by a qualified majority, the measures shall not be adopted. In that event, the Commission may submit to the Council an amended proposal or present a legislative proposal on the basis of the Treaty;
- (d) if the Council envisages adopting the proposed measures, it shall without delay submit them to the European Parliament. If the Council does not act within the two-month period, the Commission shall without delay submit the measures for scrutiny by the European Parliament;
- (e) the European Parliament, acting by a majority of its component members within four months from the forwarding of the proposal in accordance with point (a), may oppose the adoption of the measures in question, justifying their opposition by indicating that the proposed measures exceed the implementing powers provided for in the basic instrument or are not compatible with the aim or the content of the basic instrument or do not respect the principles of subsidiarity or proportionality;
- (f) if, within that period, the European Parliament opposes the proposed measures, the latter shall not be adopted. In that

event, the Commission may submit to the Committee an amended draft of the measures or present a legislative proposal on the basis of the Treaty;

- (g) if, on expiry of that period, the European Parliament has not opposed the proposed measures, the latter shall be adopted by the Council or by the Commission, as the case may be.

5. By way of derogation from paragraphs 3 and 4, a basic instrument may in duly substantiated exceptional cases provide:

- (a) that the time-limits laid down in paragraphs 3(c), 4(b) and 4(e) shall be extended by an additional month, when justified by the complexity of the measures; or
- (b) that the time-limits laid down in paragraphs 3(c), 4(b) and 4(e) shall be curtailed where justified on the grounds of efficiency.

6. A basic instrument may provide that if, on imperative grounds of urgency, the timelimits for the regulatory procedure with scrutiny referred to in paragraphs 3, 4 and 5 cannot be complied with, the following procedure shall apply:

- (a) if the measures envisaged by the Commission are in accordance with the opinion of the Committee, the Commission shall adopt the measures, which shall immediately be implemented. The Commission shall without delay communicate them to the European Parliament and to the Council;
- (b) within a time-limit of one month following that communication, the European Parliament, acting by a majority of its component members, or the Council, acting by a qualified majority, may oppose the measures adopted by the Commission, on the grounds that the measures exceed the implementing powers provided for in the basic instrument or are not compatible with the aim or the content of the basic instrument or do not respect the principles of subsidiarity or proportionality;

- (c) in the event of opposition by the European Parliament or the Council, the Commission shall repeal the measures. It may however provisionally maintain the measures in force if warranted on health protection, safety or environmental grounds. In that event, it shall without delay submit to the Committee an amended draft of the measures or a legislative proposal on the basis of the Treaty. The provisional measures shall remain in force until they are replaced by a definitive instrument.

Article 6

Safeguard procedure

The following procedure may be applied where the basic instrument confers on the Commission the power to decide on safeguard measures:

- (a) the Commission shall notify the Council and the Member States of any decision regarding safeguard measures. It may be stipulated that before adopting its decision, the Commission shall consult the Member States in accordance with procedures to be determined in each case;
- (b) any Member State may refer the Commission's decision to the Council within a time-limit to be determined within the basic instrument in question;
- (c) the Council, acting by a qualified majority, may take a different decision within a time-limit to be determined in the basic instrument in question. Alternatively, it may be stipulated in the basic instrument that the Council, acting by qualified majority, may confirm, amend or revoke the decision adopted by the Commission and that, if the Council has not taken a decision within the abovementioned time-limit, the decision of the Commission is deemed to be revoked.

Article 7

1. Each committee shall adopt its own rules of procedure on the proposal of its chairman, on the basis of standard rules of procedure which shall be published in the *Official Journal of the European Communities*.

Insofar as necessary existing committees shall adapt their rules of procedure to the standard rules of procedure.

2. The principles and conditions on public access to documents applicable to the Commission shall apply to the committees.

3. The European Parliament shall be informed by the Commission of committee proceedings on a regular basis **M1** following arrangements which ensure that the transmission system is transparent and that the information forwarded and the various stages of the procedure are identified. To that end, it shall receive agendas for committee meetings, draft measures submitted to the committees for the implementation of instruments adopted by the procedure provided for by Article 251 of the Treaty, and the results of voting and summary records of the meetings and lists of the authorities and organisations to which the persons designated by the Member States to represent them belong. The European Parliament shall also be kept informed whenever the Commission transmits to the Council measures or proposals for measures to be taken.

4. The Commission shall, within six months of the date on which this Decision takes effect, publish in the *Official Journal of the European Communities*, a list of all committees which assist the Commission in the exercise of implementing powers. This list shall specify, in relation to each committee, the basic instrument(s) under which the committee is established. From 2000 onwards, the Commission shall also publish an annual report on the working of committees.

5. The references of all documents sent to the European Parliament pursuant to paragraph 3 shall be made public in a register to be set up by the Commission in 2001.

Article 8

If the European Parliament indicates, in a Resolution setting out the grounds on which it is based, that draft implementing measures, the adoption of which is contemplated and which have been submitted to a committee pursuant to a basic instrument adopted under Article 251 of the Treaty, would exceed the implementing

powers provided for in the basic instrument, the Commission shall re-examine the draft measures. Taking the Resolution into account and within the time-limits of the procedure under way, the Commission may submit new draft measures to the committee, continue with the procedure or submit a proposal to the European Parliament and the Council on the basis of the Treaty.

The Commission shall inform the European Parliament and the committee of the action which it intends to take on the Resolution of the European Parliament and of its reasons for doing so.

Article 9

Decision 87/373/EEC shall be repealed.

Article 10

This Decision shall take effect on the day following that of its publication in the *Official Journal of the European Communities*.